

# MONTANA ADMINISTRATIVE REGISTER

2020 ISSUE NO. 7  
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PAGES 633-718



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 7

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	AMENDED SUPPLEMENTAL
ARM 17.74.350, 17.74.352,	)	NOTICE OF PUBLIC HEARING ON
17.74.355, 17.74.359, and 17.74.364;	)	PROPOSED AMENDMENT,
the repeal of 17.74.401, 17.74.402,	)	REPEAL, AND ADOPTION
17.74.403, and 17.74.404; and the	)	
adoption of New Rules I through IV	)	(ASBESTOS)
pertaining to incorporation by	)	
reference, definitions, asbestos	)	
project permits, training provider	)	
requirements, fees, and refunds	)	

TO: All Concerned Persons

1. On February 28, 2020, the Department of Environmental Quality (department) published MAR Notice No. 17-410 pertaining to the public hearing on the proposed amendment, repeal, and adoption of the above-stated rules at page 354 of the 2020 Montana Administrative Register, Issue Number 4. On March 27, 2020, the department published a supplemental notice at page 525 of the 2020 Montana Administrative Register, Issue Number 6, where the March 24, 2020 informal public meeting was cancelled, and the public hearing was rescheduled to April 29, 2020. Also, the comment period was extended to May 1, 2020.

2. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, on April 29, 2020, at 10:00 a.m., the department will hold a public hearing via remote conferencing for the proposed amendment, repeal, and adoption of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform by dialing by telephone, 1 (866) 906-9888, meeting ID: 5969240.

3. Concerned persons may submit their written data, views, or arguments to Sandy Scherer, Paralegal, 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](mailto:sscherer@mt.gov), no later than 5:00 p.m., May 1, 2020. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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 April 7, 2020.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.29.1433, 24.29.1534, and ) PROPOSED AMENDMENT  
24.29.1538 pertaining to medical fee )  
schedules for workers' compensation )  
purposes )

TO: All Concerned Persons

1. On May 8, 2020, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the novel coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting, <https://mt-gov.zoom.us/j/163824100>,  
Meeting ID: 163824100

OR

(b) Dial by telephone, +1 406 444 9999 or +1 646 558 8656,  
Meeting ID: 163824100

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 1, 2020, to advise us of the nature of the accommodation that you need. Please contact Celeste Ackerman, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011; telephone (406) 444-6604; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail [celeste.ackerman@mt.gov](mailto:celeste.ackerman@mt.gov).

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

24.29.1433 FACILITY SERVICE RULES AND RATES FOR SERVICES  
PROVIDED ON OR AFTER JULY 1, 2013 (1) through (1)(c)(v) remain the same.

(vi) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2018," for services provided from July 1, 2018, through June 30, 2019; and

(vii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2019," for services provided from July 1, 2019, through June 30, 2020; and

(viii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2020."

(2) through (11)(a)(vi) remain the same.

(vii) Effective July 1, 2019, through June 30, 2020, the base rate is \$8,599.

(viii) Effective July 1, 2020, the base rate is \$8,909.

(b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight. For example, if the MS-DRG weight is 0.5, the amount payable is ~~\$4,299.50~~ \$4,454.50, which is the base rate of ~~\$8,599~~ \$8,909 multiplied by 0.5.

(c) through (12)(a)(v) remain the same.

(vi) \$116, from July 1, 2018, through June 30, 2019; ~~and~~

(vii) ~~\$119, on or after from~~ July 1, 2019-, through June 30, 2020; and

(viii) \$123, on or after July 1, 2020.

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

(vi) \$87, from July 1, 2018, through June 30, 2019; ~~and~~

(vii) ~~\$89, on or after from~~ July 1, 2019-, through June 30, 2020; and

(viii) \$92, on or after July 1, 2020.

(c) through (g) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

#### 24.29.1534 PROFESSIONAL FEE SCHEDULE FOR SERVICES

PROVIDED ON OR AFTER JULY 1, 2013 (1) through (1)(a)(v) remain the same.

(vi) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2018" applies to services provided from July 1, 2018, through June 30, 2019; ~~and~~

(vii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2019" applies to services provided ~~on or after from~~ July 1, 2019-, through June 30, 2020; and

(viii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2020" applies to services provided on or after July 1, 2020.

(b) through (10) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

#### 24.29.1538 CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) through (2)(g) remain the same.

(h) \$63.50 from July 1, 2018, through June 30, 2019; ~~and~~

(i) ~~\$64.04 on or after from~~ July 1, 2019-, through June 30, 2020; and

(j) \$63.41 on or after July 1, 2020.

(3) through (3)(h) remain the same.



- (i) \$66.97 from July 1, 2018, through June 30, 2019; and
  - (j) ~~\$69.58 on or after from~~ \$69.58 on or after from July 1, 2019, through June 30, 2020; and
  - (k) \$67.32 on or after July 1, 2020.
- (4) and (5) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1433, 24.29.1534, and 24.29.1538 to incorporate the annually updated medical fee schedules and related materials, in order to comply with the provisions of 39-71-704(2), MCA, that require that the department annually establish a medical fee schedule.

4. Copies of the proposed 2020 publication are available and can be accessed at <http://erd.dli.mt.gov/work-comp-claims/medical-regulations>.

5. A printed version of the proposed 2020 publication is also available by contacting Celeste Ackerman at the address, e-mail, or telephone numbers listed in paragraph 2 of this notice.

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 Celeste Ackerman, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; fax (406) 444-4140; or e-mail to [celeste.ackerman@mt.gov](mailto:celeste.ackerman@mt.gov) and must be received no later than 5:00 p.m., on May 15, 2020.

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

8. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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

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

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

/s/ MARK CADWALLADER

Mark Cadwallader  
Alternate Rule Reviewer

/s/ BRENDA NORDLUND

Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND  
INDUSTRY

Certified to the Secretary of State April 7, 2020.

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

In the matter of the amendment of ARM ) NOTICE OF PUBLIC HEARING ON  
24.126.2103 continuing education ) PROPOSED AMENDMENT AND  
requirements, 24.126.2105 acceptable ) ADOPTION  
continuing education, and the adoption )  
of New Rule I dry needling )

TO: All Concerned Persons

1. On May 11, 2020, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and adoption of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform by dialing 406-444-4647 (local) or 1-833-681-5958 (toll free) and entering meeting ID 499538 when directed to do so.

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 Chiropractors no later than 5:00 p.m., on May 4, 2020, to advise us of the nature of the accommodation that you need. Please contact Kevin Bragg, Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or [dlibsdcchi@mt.gov](mailto:dlibsdcchi@mt.gov) (board's e-mail).

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

24.126.2103 CONTINUING EDUCATION REQUIREMENTS (1) ~~Beginning with the 2018 renewal, every active licensee~~ Active licensees shall affirm an understanding of the duty to complete a minimum of 12 hours of ~~board-approved~~ continuing education (CE) during each renewal period ~~as defined in per~~ ARM 24.101.413.

~~(a) Of the 12 hours, no more than two hours can be in the subject area of philosophy and/or practice management.~~

(2) Licensees shall complete four hours of CE in professional boundaries and ethics every four-year reporting period. These hours shall be in addition to and not count toward the 12 hours of CE required each year renewal period.

(3) remains the same.

(4) Licensees ~~transferring~~ converting from inactive to active status shall ~~abide by~~ comply with the continuing education CE requirements of ARM 24.126.701.

~~(5) An annual random audit of ten percent of active licensees will be~~

~~conducted to verify compliance with the CE requirements. The board may randomly audit up to 50 percent of renewed licensees.~~

~~(6) Clock hours of CE hours cannot be accumulated and carried over from one renewal period to the next.~~

~~(7) Licensees attending the Montana Chiropractic Association educational meetings must register with the secretary of the association each day of attendance to receive CE credit.~~

~~(8) (7) A three-month extension will be provided for all licensees who fail to meet the CE 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.~~

~~(9) (8) Any licensee seeking a hardship waiver from their CE requirements shall apply to the board, in writing, as soon as possible after the hardship is identified and prior to the close of licensure for that period. A licensee may request an exemption from CE requirements due to hardship. Requests will be considered by the board.~~

~~(a) Specific details of the hardship must be included.~~

~~(b) The board must find that a hardship exists.~~

~~(c) The waiver may be absolute or conditional.~~

AUTH: 37-1-131, 37-1-319, 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 amending (1) to strike the past implementation date of the renewal affirmation as no longer necessary.

It is reasonably necessary to move (1)(a) to ARM 24.126.2105 as a more appropriate location.

The board is amending (5) to allow flexibility in conducting random CE audits. Currently, the board randomly audits 10 percent of all renewed chiropractors for each reporting period. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

The board is striking (7) as registration of CE program attendees is entirely within the discretion of the CE provider.

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

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

24.126.2105 APPROVED ACCEPTABLE CONTINUING EDUCATION

(1) ~~Continuing Acceptable~~ continuing education (CE) ~~approved by the board~~ must directly relate to the practice of chiropractic and ~~shall~~ be affiliated with or approved by:

- (a) national, regional, or state chiropractic associations; ;
- (b) state licensing boards; ;
- (c) academies; ;
- (d) colleges of chiropractic; ; or
- (e) ~~education approved by the Federation of Chiropractic Licensure Board (FCLB) Providers of Approved Continuing Education (PACE).~~

(2) From the date of ~~their~~ original licensure in Montana until the end of the first full renewal period, new licensees can fulfill the 12-hour CE requirement by attending one session of the "new doc seminar" ~~in lieu of the 12-hour CE requirement."~~

(3) A maximum of two hours can be in philosophy and/or practice management.

~~(3)~~ (4) ~~All licensees~~ Licensees can receive two credits for each chiropractic board meeting attended.

~~(4)~~ (5) ~~All~~ Internet courses must meet the same CE guidelines ~~for CE approval.~~

~~(5)~~ (6) ~~The board shall not approve a course of study if it is~~ CE courses considered outside the "scope of practice" ~~for a chiropractor in Montana~~ chiropractors are not acceptable.

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

IMP: 37-1-131, 37-1-141, 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 relocating provisions from ARM 24.126.2103(1)(a) to (3) as a more appropriate location in this rule.

4. The proposed new rule is as follows:

NEW RULE I DRY NEEDLING (1) Dry needling is a skilled technique performed using a mechanical device, filiform needle(s), to penetrate the skin and/or underlying tissues as a treatment method to manipulate tissues of the body for the correction of nerve interference.

(2) Dry needling requires a chiropractic examination and diagnosis.

(3) To perform dry needling, chiropractors must have completed training in dry needling.

(a) Dry needling training shall include, but not be limited to, training in the following areas:

- (i) indications;
- (ii) contraindications;
- (iii) potential risks;

- (iv) proper hygiene;
- (v) proper use and disposal of needles.
- (b) To perform dry needling, chiropractors must have completed training in dry needling affiliated with or approved by:
  - (i) national, regional, or state chiropractic associations;
  - (ii) state licensing boards;
  - (iii) academies;
  - (iv) colleges of chiropractic; or
  - (v) the Federation of Chiropractic Licensure Board (FCLB) Providers of Approved Continuing Education (PACE).
- (c) Initial training in dry needling must include hands-on training.
- (4) A chiropractor shall perform dry needling in a manner consistent with generally accepted standards of practice, including relevant standards of the Center for Disease Control and Prevention, and Occupational Safety and Health Administration blood borne pathogen standards as per 29 CFR 1910.1030 et. seq.
- (5) Dry needling shall only be performed by a chiropractor and may not be delegated.
- (6) Chiropractors performing dry needling must maintain proof of appropriate training as required by this rule. Failure to provide proof of training upon the board's request may result in disciplinary action.

AUTH: 37-1-131, 37-12-201, MCA

IMP: 37-1-131, 37-12-101, 37-12-104, MCA

**REASON:** The statutory scope of practice for Montana licensed chiropractors is broad and includes recognized diagnostic and treatment methods as taught in chiropractic colleges. While primarily focused on the spine, chiropractic care since its inception has provided treatment to all areas of the musculoskeletal system. Dry needling includes using filiform needles as a mechanical device to treat pain and injury. The procedure can also be applied to specific muscle motor points, spinal segments, and other structures including ligaments, tendons, and joint capsules for pain relief and increased mobility. In clinical practice dry needling is often used in conjunction with other physiotherapeutic modalities to manage pain and improve function. The board is proposing this new rule now because instruction on the modality is becoming readily available as chiropractors throughout the United States are increasingly incorporating dry needling into their practices. The board is proposing to adopt NEW RULE I to provide guidance on the safe practice of dry needling in Montana. This new rule establishes criteria to ensure that chiropractors who perform dry needling meet minimum educational training and safety standards. Further, the rule establishes potential disciplinary consequences for failing to meet those standards.

Over the last nine years, the board has received several public comments to support the express incorporation of dry needling into the chiropractic scope of practice and to provide practitioners with guidance regarding its use. Dry needling, according to board research, is currently allowed in 35 states nationwide. Additionally, four chiropractic colleges incorporate dry needling instruction either via curriculum or continuing education. The board has undertaken extensive evaluation

of all 35 permissive jurisdictions as well as their regulations. NEW RULE I is the result of extensive investigation, lengthy board discussion, and the conclusion that adequate instruction on dry needling has expanded and evolved so that dry needling is within the current scope of practice as a recognized chiropractic treatment method.

The rule requires that Montana licensed chiropractors either currently possess or obtain the appropriate training to exercise the modality in practice while adequately ensuring public protection. The board notes that 13 of the 35 permissive states do not require any specific training to undertake dry needling as part of licensed chiropractic practice. The board concluded that for public safety purposes some level of training must be undertaken in the modality to ensure adequate public safety. This training must include, but is not limited to, the subjects identified in (3)(a)(i) through (v).

The board determined that Montana chiropractors must be able to demonstrate competency to perform dry needling as part of their chiropractic practices. Licensed chiropractors in Montana are required to pass the physiotherapy portion of the National Board of Chiropractic Examiners exam. This training and measured competence, when combined with proper continuing education, provides practitioners a firm base from which to utilize dry needling. Since the modality is taught in, and by, chiropractic colleges, the board concluded the most efficient way for practitioners to validate this training is to maintain documentation of the training and provide proof upon request by the board. Chiropractors are licensed doctors who must utilize their own professional judgment consistently and continually in their practices. As such, the board determined that licensees are competent to abide by these regulations without requiring submission of explicit documentation by all licensees. This process will also continue to provide licensees with a fiscally conservative board operation. Further, the board will address complaints regarding improper treatment and use of dry needling through the standardized complaint procedure as unprofessional conduct in ARM 24.126.2301.

As medical technology evolves, scopes of practice and training shift and overlap for many health care professionals who use and are trained in the use of needles. The board's foremost concern is public safety and NEW RULE I provides practitioners with a measured direction from which to begin their use of the modality.

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 Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdcchi@mt.gov](mailto:dlibsdcchi@mt.gov), and must be received no later than 5:00 p.m., May 15, 2020.

6. An electronic copy of this notice of public hearing is available at [www.chiropractor.mt.gov](http://www.chiropractor.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 Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdcchi@mt.gov](mailto:dlibsdcchi@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 24.126.2103 and 24.126.2105 will not significantly and directly impact small businesses.

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

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

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

BOARD OF CHIROPRACTORS  
V.J. MADDIO, DC  
PRESIDENT

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

/s/ BRENDA NORDLUND  
Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 7, 2020.



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

In the matter of the amendment of ARM ) NOTICE OF PUBLIC HEARING ON  
24.156.2720 pertaining to ECP training ) PROPOSED AMENDMENT  
courses )

TO: All Concerned Persons

1. On May 13, 2020, at 1:00 p.m., a public hearing will be held via remote conferencing to consider the proposed amendment of the above-stated rule. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform by dialing 406-444-4647 (local) or 1-833-681-5958 (toll free) and entering meeting ID 3075649 when directed to do so.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on May 6, 2020, to advise us of the nature of the accommodation that you need. Please contact Samuel Hunthausen, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdmed@mt.gov (board's e-mail).

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

24.156.2720 ECP TRAINING COURSES (1) and (2) remain the same.

(3) Upon written request from the medical director of an AEMT or paramedic course, the board or its designee may approve substitution of patient simulators for up to 50 percent of the live patient requirements specified under (2)(b) and (c).

(3) through (8) remain the same but are renumbered (4) through (9).

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

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

**REASON:** The board determined it is reasonably necessary to amend this rule in response to the COVID-19 pandemic. The current rule requires that ECP training courses contain a clinical component with skills performed on live patients. The board is amending this rule to enable many advanced emergency medical

technicians (AEMT) to matriculate from their training courses by permitting some clinical experience with patient simulators.

The board has increasingly received requests to allow for simulated patients in place of some or all the live patients required during the clinical portion of the AEMT and paramedic courses. The requests are increasing because instructors are finding it more difficult to find opportunities for hands-on training with live patients both in rural settings and more recently during the COVID-19 national and state declared emergencies. Those declared emergencies are straining and will continue to strain the number of healthcare providers available.

Additionally, most training facilities are now prohibiting students as a way to reduce disease transmission, and it is not possible for students to interact with live patients and complete the clinical component of their courses. If students are not allowed to complete the courses with patient simulators, they will not be eligible for licensure. The board has determined that allowing substitution of up to 50 percent of live patients for patient simulators will ensure individuals are trained safely and effectively while allowing students to meet their clinical requirements.

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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsmed@mt.gov](mailto:dlibsmed@mt.gov), and must be received no later than 5:00 p.m., May 15, 2020.

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

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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsmed@mt.gov](mailto:dlibsmed@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 24.156.2720 will not significantly and directly impact small businesses.

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

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

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

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

/s/ BRENDA NORDLUND  
Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 7, 2020.

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

In the matter of proposed 2020 ) INFORMATIONAL NOTICE OF  
rulemaking by the Interstate ) PROPOSED RULEMAKING  
Commission of Nurse Licensure )  
Compact Administrators pertaining to )  
the Nurse Licensure Compact rules )

TO: All Concerned Persons

1. The Board of Nursing (board), as a party state of the Nurse Licensure Compact, is providing this informational notice of rulemaking pertaining to the Nurse Licensure Compact rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this informational notice. If you require an accommodation, contact the board no later than 5:00 p.m., on April 24, 2020, to advise us of the nature of the accommodation that you need. Please contact Missy Poortenga, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or nurse@mt.gov (board's e-mail).

3. On March 12, 2020, the Interstate Commission of Nurse Licensure Compact Administrators (commission) published a Notice of Proposed Rules and Notice of Public Hearing on the National Council of State Boards of Nursing (NCSBN) web site.

4. The commission's notice is available on the NCSBN web site at <https://www.ncsbn.org/nlcrules.htm>. The commission's notice is also available on the board's web site at nurse.mt.gov.

5. Any interested person may present verbal or written comments as instructed in the notice. The commission's deadline for submitting comments is 2:00 p.m. Central Time on May 12, 2020.

BOARD OF NURSING  
SHARON SWEENEY FEE, PHD, RN, CNE  
PRESIDENT

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

/s/ BRENDA NORDLUND  
Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 7, 2020.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.159.670 curriculum goals and ) PROPOSED AMENDMENT  
general requirements for programs )

TO: All Concerned Persons

1. On May 8, 2020, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment of the above-stated rule. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform by dialing 406-444-4647 (local) or 1-833-681-5958 (toll free) and entering meeting ID 4806783 when directed to do so.

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 Nursing no later than 5:00 p.m., on May 1, 2020, to advise us of the nature of the accommodation that you need. Please contact Missy Poortenga, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or nurse@mt.gov (board's e-mail).

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

24.159.670 CURRICULUM GOALS AND GENERAL REQUIREMENTS FOR PROGRAMS (1) through (5) remain the same.

(6) For each course utilizing simulation, no more than 50 percent of clinical hours shall be replaced with simulation hours. Upon request by a program, the board may temporarily allow all programs to exceed the 50 percent cap on simulation due to extenuating circumstances such as a state or national emergency.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

REASON: Due to the coronavirus pandemic (COVID-19), many nursing programs are unable to complete clinical coursework at facilities or through other hands-on methodology and have become increasingly reliant on simulated clinical learning. The board recognizes the impact this may have as a barrier to timely course completion and potential licensure during declared states of emergency. The board

determined it is reasonably necessary to amend this rule to allow exemptions to the cap on simulation hours when a state of emergency exists.

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 Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [nurse@mt.gov](mailto:nurse@mt.gov), and must be received no later than 5:00 p.m., May 15, 2020.

5. An electronic copy of this notice of public hearing is available at <http://nurse.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 Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [nurse@mt.gov](mailto:nurse@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 24.159.670 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; facsimile (406) 841-2305; or to [nurse@mt.gov](mailto:nurse@mt.gov).

9. Missy Poortenga, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF NURSING  
SHARON SWEENEY FEE, PHD, RN, CNE  
PRESIDENT

/s/ DARCEE L. MOE

Darcee L. Moe  
Rule Reviewer

/s/ BRENDA NORDLUND

Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 7, 2020.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 38.5.8401 and 38.5.8408 ) PROPOSED AMENDMENT  
pertaining to Small Generator )  
Interconnection definitions and )  
procedures )

TO: All Concerned Persons

1. On June 2, 2020, at 1:30 p.m., the Department of Public Service Regulation, Public Service Commission (department) will hold a public hearing in the Bollinger Room, 1701 Prospect 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 the department no later than 5:00 p.m. on May 22, 2020, to advise us of the nature of the accommodation that you need. Please contact Vicki LaFond-Smith, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD/Montana Relay Service (406) 444-4212; or e-mail [vicki.lafond-smith@mt.gov](mailto:vicki.lafond-smith@mt.gov).

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

38.5.8401 DEFINITIONS Terminology used in these rules has the following meanings, except where the context clearly indicates otherwise:

(1) through (17) remain the same.

(18) "Premises" means the customer-generator's real property served by each metered electrical service. Only one net metering system, with an aggregate nameplate capacity that does not exceed 50 kW, is permitted per premises.

(18) remains the same but is renumbered (19).

~~(19) (20) "Small Generator Facility" means a generator or a group of generators located on the utility customer's premises that have an aggregate nameplate capacity that is less than or equal to 10 MW and is designed to operate in parallel with the electric distribution system~~ an energy resource(s) for the production, or storage and production, of electricity that has an aggregate nameplate capacity that does not exceed 10 MW, and is designed to operate in parallel with the electric distribution system.

AUTH: 69-3-103, MCA

IMP: 69-3-102, MCA



38.5.8408 ADDITIONAL REQUIREMENTS (1) through (11) remain the same.

(12) Each utility subject to these rules must file with the commission an annual report detailing:

(a) the number of interconnection requests from each request described in ARM 38.5.8409 through 38.5.8412;

(b) the number of interconnections approved, failed, or withdrawn/abandoned at each level;

(c) the number of frequency or voltage events on the EDS side of the system that required interconnections at Level 1 to trip;

(d) the total amount of generation for the twelve-month period ending December 31 of the prior year, including amount of distributed energy resource generation broken out by resource type; and

(e) the average time of approval for small generator interconnection requests at Level 1.

AUTH: 69-3-103, MCA

IMP: 69-3-102, MCA

4. STATEMENT OF REASONABLE NECESSITY: These amendments are necessary to effectuate the commission's recent decisions in *In re Northwestern's 2018 SGIP Application*, D2016.9.66, Order 7621a (Jun. 7, 2019); *In re MDU's 2018 SGIP Application*, D2018.6.44, Order 7620a (Apr. 19, 2019); and *In re the Commission's Biennial Review of SGIP Requirements*, Notice of Commission Action (Jan. 23, 2018). Specifically, this rulemaking petition defines what is a "premises" for SGIP purposes, amends the definition of "small generator facility," and requires annual reporting of related SGIP events.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Vicki LaFond Smith, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail [vicki.lafond-smith@mt.gov](mailto:vicki.lafond-smith@mt.gov) and must be received no later than 5:00 p.m., June 5, 2020.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to the Department of Public Service

Regulation, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, faxed to Vicki LaFond-Smith at (406) 444-7618, e-mailed to vicki.lafond-smith@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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.

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

/s/ JUSTIN KRASKE

Justin Kraske  
Rule Reviewer

/s/ BRAD JOHNSON

Brad Johnson  
Chairman  
Department of Public Service Regulation

Certified to the Secretary of State April 7, 2020.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF ADOPTION OF
Temporary Emergency Rule I	)	TEMPORARY EMERGENCY RULE
pertaining to extension of time periods	)	
for annual reporting for escrow	)	
businesses, quarterly reporting for	)	
mortgage servicers, and abandonment	)	
of initial mortgage license applications	)	
related to the COVID-19 pandemic	)	

TO: All Concerned Persons

1. The Department of Administration is adopting Temporary Emergency Rule I for the following reasons:

A. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 2-2020.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 14, 2020, Governor Steve Bullock extended the emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 3-2020.

D. The director of the Department of Administration finds that under the emergency circumstances of the COVID-19 pandemic, there is an immediate peril to the public health, safety, and welfare requiring adoption of a rule upon fewer than 30 days' notice. Licensees and applicants showing symptoms consistent with COVID-19 may be directed to avoid the workplace and follow recommendations of medical professionals and public health authorities to self-quarantine for specified periods. All Americans are being advised to practice social distancing. Effective March 18, 2020, Prometric Test Centers in the United States and Canada are closed for the next 30 days. State and local governments and private vendors offering fingerprinting services are being temporarily suspended in numerous locations across the country to prevent the spread of COVID-19. These facilities and services are necessary for mortgage license applicants to access records and complete their applications.

E. There is a reasonable necessity to immediately adopt a temporary emergency rule pursuant to 2-4-303, MCA, for escrow businesses, mortgage servicers, and mortgage license applicants to protect the public health, safety, and welfare because of the emergency conditions of the COVID-19 pandemic to avoid contributing to a shortage of available personnel, allow licensees to delay reporting and focus on addressing customers' COVID-19 concerns, and ensure the public has sufficient access to financial services.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to [banking@mt.gov](mailto:banking@mt.gov).

3. The temporary emergency rule is effective March 24, 2020, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides:

NEW RULE I EXTENSION OF TIME PERIODS DURING DECLARED EMERGENCY OR DISASTER RELATED TO COVID-19 PANDEMIC (1) This rule is only effective when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) The time period provided in ARM 2.59.713(2) within which persons licensed under the Montana Regulation of Escrow Businesses Act shall file the Montana Escrow Business Annual Financial Statement and Escrow Activities Report is temporarily extended by 30 days to May 30, 2020.

(3) The time period provided in ARM 2.59.1743(1) within which mortgage servicers shall submit the quarterly report for the quarter ending March 31, 2020, is temporarily extended to June 14, 2020.

(4) The time period provided in ARM 2.59.1753(3) is temporarily extended by 60 days to allow applicants for an initial license a total of 120 days following the department's notice of deficiency to provide the documents or information requested before the application will be deemed abandoned.

AUTH: 32-7-108, 32-9-120, 32-9-130, MCA

IMP: 32-7-115, 32-9-120, 32-9-170, MCA

REASON: In addition to the rationale stated in paragraph 1, the department has received reports from applicants, licensees, and other regulators of difficulty in completing applications and making reports due to COVID-19 restrictions.

The department is adopting New Rule I(2) to give escrow businesses additional time to file the financial statement and activity report to allow them to address potential issues with gathering the data and filing the report. A thirty-day extension was chosen to balance the department's need to receive this information in a timely manner with the need to allow escrow businesses more time to provide information due to COVID-19 related closures. To date, office closures due to official orders have been limited in duration, and it is anticipated that a thirty-day extension is sufficient to allow licensees to obtain information when routine or limited operations resume.

The department is adopting New Rule I(3) to give mortgage servicers additional time to file the mortgage servicer first quarter report to allow them to

address potential issues with gathering the data and filing the report. A thirty-day extension, for a total of 75 days following the end of the first quarter, was chosen to balance the department's need to receive this information in a timely manner with the need to allow mortgage servicers more time to provide information due to COVID-19 related closures. To date, office closures due to official orders have been limited in duration, and it is anticipated that a thirty-day extension is sufficient to allow licensees to obtain information when routine or limited operations resume.

The department is adopting New Rule I(4) because the department understands applicants may not be able to respond to department requests for information as quickly as before given the upheaval in the working lives of applicants due to COVID-19. The temporary emergency rule will allow applicants two additional months before their licenses are abandoned, which would require them to reapply and pay another fee. A sixty-day extension was chosen to balance the department's need to receive this information in a timely manner with the need to allow applicants more time to provide information due to COVID-19 related closures. To date, office closures due to official orders have been limited in duration, and it is anticipated that a sixty-day extension is sufficient to allow licensees to obtain information when routine or limited operations resume. The department determined a thirty-day extension would not be sufficient for license applicants because the initial application process may require access to information from a greater variety of sources than obtaining information necessary to provide reports about licensees' ongoing business activities.

5. The rationale for the temporary emergency rule is set forth in paragraph 1 and in the statement of reasonable necessity following the rule.

6. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Heather Hardman, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [banking@mt.gov](mailto:banking@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

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

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

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

Certified to the Secretary of State March 24, 2020.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of ) NOTICE OF ADOPTION OF  
Temporary Emergency Rule I ) TEMPORARY EMERGENCY RULE  
pertaining to annual meetings held by )  
banks and credit unions during the )  
COVID-19 pandemic )

TO: All Concerned Persons

1. The Department of Administration is adopting Temporary Emergency Rule I for the following reasons:

A. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 2-2020.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 13, 2020, Governor Steve Bullock extended the emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 3-2020.

D. On March 26, 2020, Governor Steve Bullock issued a Directive Implementing Executive Orders 2-2020 and 3-2020 providing measures to stay at home and designating certain essential functions until April 10, 2020.

E. On March 29, 2020, President Donald J. Trump extended the nationwide social distancing guidelines until April 30, 2020.

F. The director of the Department of Administration finds that under the emergency circumstances of the COVID-19 pandemic, there is an immediate peril to the public health, safety, and welfare requiring adoption of a rule upon fewer than 30 days' notice. Individuals showing symptoms consistent with COVID-19 are directed to avoid the workplace and follow recommendations of medical professionals and public health authorities to self-quarantine for specified periods. To the maximum extent possible, Montanans are being directed to stay at home to curtail the spread of the COVID-19 contagion. Montana state-chartered credit unions are required to hold an annual meeting in accordance with their bylaws; some of which are scheduled to be held in April. Attendees of the annual meeting are the credit union's management and staff, board of directors, credit committee, supervisory committee, and all credit union members are extended an invitation. The current model bylaws require a quorum of 50 members to be physically present and do not allow for a virtual meeting. Montana state-chartered banks are required to hold an annual meeting in accordance with their bylaws before April 15. Attendees of the annual meeting are the bank's management and staff, board of directors, and shareholders.

G. There is a reasonable necessity to immediately adopt a temporary emergency rule pursuant to 2-4-303, MCA, for banks and credit unions to protect the public health, safety, and welfare because of the emergency conditions of the COVID-19 pandemic and ensure the public has sufficient access to financial services.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to [banking@mt.gov](mailto:banking@mt.gov).

3. The temporary emergency rule is effective April 2, 2020, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides:

NEW RULE I VIRTUAL ANNUAL MEETINGS HELD BY BANKS AND CREDIT UNIONS DURING DECLARED EMERGENCY OR DISASTER RELATED TO COVID-19 PANDEMIC (1) This rule is only effective when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) During the period of a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic, a bank or credit union may hold its annual meeting in the form of a virtual meeting. To satisfy the bank's or credit union's annual meeting requirement, a virtual meeting must be live, allow electronic or telephonic participation in the meeting in real-time, and provide simultaneous audio transmission of the meeting.

AUTH: 32-1-218, 32-3-201, MCA

IMP: 32-1-101, 32-1-211, 32-1-322, 32-3-302, 32-3-310, MCA

REASON: In addition to the rationale stated in paragraph 1, the department has received concerns from banks and credit unions regarding the difficulty of holding an in-person annual meeting while complying with the stay-at-home directive and social distancing requirements.

The department is adopting New Rule I(2) to address concerns from banks and credit unions by allowing virtual annual meetings while operating under a declared state of emergency for COVID-19.

5. The rationale for the temporary emergency rule is set forth in paragraph 1 and in the statement of reasonable necessity following the rule.

6. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by

this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Heather Hardman, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [banking@mt.gov](mailto:banking@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

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

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

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

Certified to the Secretary of State April 2, 2020.



BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 8.94.3814 and 8.94.3815 )  
pertaining to governing the )  
submission and review of applications )  
for funding under the Treasure State )  
Endowment Program (TSEP) )

TO: All Concerned Persons

1. On February 28, 2020, the Department of Commerce published MAR Notice No. 8-94-180 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 350 of the 2020 Montana Administrative Register, Issue Number 4.

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

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

COMMENT NO. 1: Due to concerns and response to COVID-19, the department received numerous comments requesting an extension of the Treasure State Endowment Program (TSEP) application deadline of May 1, 2020, and a waiver or extension of any requirements or ranking criteria relating to the public meetings requirements.

RESPONSE NO. 1: Due to the repercussions of COVID-19, the department agrees to extend the application deadline for TSEP to June 12, 2020, and will allow any required TSEP Construction Application public meeting documentation to be submitted any time before August 3, 2020.

COMMENT NO. 2: A commenter requested that an application checklist be included in the application, so the applicant can make sure all components are included in the submittal of the application.

RESPONSE NO. 2: Appendix D provides a list of all required materials to be submitted and how the application should best be organized. The link will be fixed.

COMMENT NO. 3: Does the PER or Environmental Review need to be adopted before the application is submitted on June 12th or before the August 3rd deadline of public meeting information?

RESPONSE NO. 3: Due to the repercussions of COVID-19, the Department of Commerce agrees to extend the application deadline for TSEP to June 12, 2020,

and allow any required TSEP Construction Application public meeting documentation be submitted any time up until August 3, 2020. The public meeting documentation includes the process for Preliminary Engineering or environmental review processes.

/s/ Amy Barnes  
Amy Barnes  
Rule Reviewer

/s/ Tara Rice  
Tara Rice  
Director  
Department of Commerce

Certified to the Secretary of State April 7, 2020.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

In the matter of the adoption of an        ) NOTICE OF ADOPTION OF AN  
emergency rule closing the Smith        ) EMERGENCY RULE  
River from Camp Baker to Eden        )  
Bridge        )

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) There are intermittent ice jams on the Smith River that have caused the river to be impassable by recreationists. The steep canyon walls provide a perfect place for ice to collect and remain due to lack of sun exposure.

(b) Persons recreating on the river in these conditions would be subjected to:

(i) collisions with ice;

(ii) becoming stranded and having to hike out of steep canyon areas; or

(iii) drowning.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, due to the combination of unsafe conditions and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 7 of the 2020 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 1, 2020, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

3. The emergency rule is effective March 25, 2020, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

RULE 1 SMITH RIVER EMERGENCY CLOSURE (1) The closed portion of the Smith River is located in Meagher and Cascade Counties.

(2) The Smith River is closed to all floating on the river between Camp Baker and Eden Bridge.

(3) This rule will remain in effect until the department determines the river is again safe for boating.

AUTH: 2-4-303, 23-1-106, MCA  
IMP: 2-4-303, 23-1-106, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Colin Maas, Fish, Wildlife and Parks, 4600 Giant Springs Road, Great Falls, MT 59405; or e-mail [cmaas@mt.gov](mailto:cmaas@mt.gov). Any comments must be received no later than May 15, 2020.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Mike Volesky

Mike Volesky

Chief of Operations

Department of Fish, Wildlife and Parks

/s/ Zach Zipfel

Zach Zipfel

Rule Reviewer

Certified to the Secretary of State March 25, 2020.

BEFORE THE PUBLIC SAFETY OFFICERS  
STANDARDS AND TRAINING COUNCIL  
OF THE STATE OF MONTANA

In the matter of the amendment of ) CORRECTED NOTICE OF  
ARM 23.13.102, 23.13.206, ) AMENDMENT  
23.13.207, 23.13.208, 23.13.209, )  
23.13.210, 23.13.212, 23.13.215, )  
23.13.702, and 23.13.703 pertaining )  
to the certification of public safety )  
officers )

TO: All Concerned Persons

1. On November 8, 2019, the Public Safety Officers Standards and Training (POST) Council published MAR Notice No. 23-13-257 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1940 of the 2019 Montana Administrative Register, Issue Number 21. On March 27, 2020, the POST Council published the notice of amendment at page 580 of the 2020 Montana Administrative Register, Issue Number 6.

2. This correction notice is being issued to correct errors in ARM 23.13.206 and 23.13.207. The rules, as amended in corrected form, read as follows, deleted matter interlined, new matter underlined:

23.13.206 REQUIREMENTS FOR THE BASIC CERTIFICATE (1) and (2) remain as adopted.

(3) An officer meeting the qualifications outlined above will be issued a basic POST certificate. The discipline of the basic POST certificate will correspond to the basic training course the officer attended. POST will consider the completion of the above requirements to constitute the ~~officers~~ officer's application for a POST basic certificate. However, if an officer wishes to fill out an application form, then POST will also consider that application. POST will not reissue a basic certificate merely to change the discipline listed.

23.13.207 REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER INTERMEDIATE CERTIFICATE (1) through (1)(b) remain as adopted.

- (c) probation and parole officer; ~~and~~
- (d) misdemeanor probation/pretrial services officer; and
- (e) through (6) remain as adopted.

3. The replacement pages for this corrected notice were submitted to the Secretary of State on March 31, 2020.

/s/ Hannah Tokerud  
Hannah Tokerud  
Rule Reviewer

Sheriff Tony Harbaugh  
Chairman  
Public Safety Officers Standards  
and Training Council

By: /s/ Perry Johnson  
Perry Johnson  
Bureau Chief  
Public Safety Officer Standards and  
Training Bureau

Certified to the Secretary of State April 7, 2020.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF ADOPTION OF
Temporary Emergency Rule I	)	TEMPORARY EMERGENCY RULE
pertaining to late payment penalties	)	
on quarterly VGM taxes	)	

TO: All Concerned Persons

1. The Department of Justice is adopting Temporary Emergency Rule I (DEPARTMENT MAY WAIVE OR REDUCE LATE PAYMENT PENALTIES FOR VGM TAXES ACCRUING DURING QUARTERS IMPACTED BY COVID-19 CLOSURE ORDERS) for the following reasons:

A. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 2-2020.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 14, 2020, Governor Steve Bullock extended the emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 3-2020.

D. On March 26, 2020, Governor Steve Bullock implemented Executive Orders 2-2020 and 3-2020, ordering Montanans to stay at home, enforcing social distancing, and restricting Montanans' personal and business interactions to essential activities only. Among many other directives, the Governor's action confirmed and continued state and local officials' earlier orders closing bars, taverns, restaurants, casinos, and others holding gambling licenses.

E. On March 31, 2020, President Donald J. Trump declared that a major disaster exists in the State of Montana and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic beginning on January 20, 2020, and continuing.

F. The Attorney General finds, under the emergency circumstances of the COVID-19 pandemic, there is an immediate peril to the public health, safety, or welfare requiring adoption of a rule upon fewer than 30 days' notice.

G. The Attorney General further finds that under the emergency circumstances of the COVID-19 pandemic, there is an immediate peril to the public health, safety, and welfare, due to the risk of community transmission of the COVID-19 virus among persons congregating in public gathering places, including businesses holding gambling licenses. For the safety of patrons, employees, and vendors, those businesses have been ordered to temporarily close. The Attorney General finds those business closures pose significant and immediate financial

hardships to affected licensees, which threatens the welfare and even the survival of those licensed businesses. Further, the financial distress of licensees directly threatens the welfare of all Montanans due to potential widespread loss of employment, loss of taxes payable to local and state governments, and loss of Main Street Montana's community, recreational, and social hubs.

H. The Attorney General further finds emergency action is necessary a) to ease regulatory burdens and costs borne by gambling licensees ordered to close; b) to manage licensees' anticipated difficulties paying quarterly video gambling machine tax payments due by April 15, 2020; and c) to comply with Governor Steve Bullock's March 26, 2020 directive as it may be extended or revised, as well as any similar orders issued by city and county officials. In his recent directive, the Governor cited and implemented 10-3-104, MCA, which empowers the Governor to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency. The Attorney General finds New Rule I is necessary to comply with that directive and finds the threat to the welfare of gambling licensees cannot be averted or remedied by any other administrative act.

I. There is reasonable necessity to immediately adopt a temporary emergency rule to ease regulatory and financial burdens on gambling licensees ordered to close to protect the public health, safety, and welfare, because of the emergency conditions of the COVID-19 pandemic. There is reasonable necessity to immediately adopt temporary emergency rules pursuant to the Governor's directive implementing 10-3-104, MCA, to ensure that the department's strict compliance with gambling rules does not contribute to licensees' insolvency or failure.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice to advise us of the nature of the accommodation that you need. Please contact Jean Saye, Department of Justice, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; or e-mail jsaye@mt.gov.

3. The temporary emergency rule is effective April 2, 2020, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides:

NEW RULE I DEPARTMENT MAY WAIVE OR REDUCE LATE PAYMENT PENALTIES FOR VGM TAXES ACCRUING DURING QUARTERS IMPACTED BY COVID-19 CLOSURE ORDERS (1) This rule is only effective when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.



(2) The department may find that good cause exists for late payment of video gambling machine quarterly taxes payable under 23-5-610, MCA, and ARM 23.16.1826 due to the circumstances of the COVID-19 pandemic.

(3) For licensees remaining closed to the public in compliance with executive orders 2-2020 and 3-2020, any current or future governor's orders extending, revising, or implementing those orders, and/or any similar orders issued by city and county officials, the department may waive or reduce the penalties imposed by ARM 23.16.1826, as is reasonable and appropriate to the circumstances of the COVID-19 pandemic, for tax periods during which the VGM permittee's operations were significantly impacted by mandatory closure orders.

(4) This rule does not alter any rule requiring timely submission of VGM quarterly tax reports.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-136, 23-5-610, 23-5-621, 23-5-637, MCA

REASON: In addition to the rationale stated in paragraph 1, the department has received pleas from individual gambling operators, from industry representatives, and from route operators for relaxation of the late VGM penalties imposed by administrative rule, ARM 23.16.1826. VGM taxes due for the third quarter of fiscal year 2020 (January 1 to March 31, 2020) are due on April 15. That rule provides penalties, calculated on a time-based formula, "will be assessed." The Montana hospitality industry, as much as or more than any other business sector, has been hard hit by closure orders and faces undeniable financial hardships. While some licensees may have adequate cash reserves to weather the COVID-19 crisis, many Montana licensees will be unable to pay routine bills, employee payroll, and VGM taxes. The late payment penalty of up to 100% of the tax due should temporarily be relaxed during this health and business crisis. While ARM 23.16.1826 is a necessary and effective tax collection tool in ordinary times, an emergency rule is necessary to ease this regulatory burden before the third quarter taxes are payable.

5. The rationale for the temporary emergency rule is set forth in paragraph 1 and in the statement of reasonable necessity following the rule.

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

7. As required by 2-4-306, MCA, the Department of Justice has taken appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them by sending this Notice of Adoption of Temporary Emergency Rule to every person on the Gambling Control Division's

interested persons list, by posting a link to this notice on the Gambling Control Division's social media outlet, Facebook, and by delivering a copy to trade group representatives.

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 adoption of the emergency rule will not significantly and directly impact small businesses.

/s/ Hannah Tokerud  
Hannah Tokerud  
Rule Reviewer

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

Certified to the Secretary of State April 2, 2020.

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT AND
24.147.302 definitions, 24.147.401 fee	)	ADOPTION
schedule, 24.147.407 name change,	)	
closure, transfer, or change of	)	
ownership – mortuary, branch	)	
establishment, crematory, or cemetery,	)	
24.147.507 mortician licenses,	)	
24.147.1105 crematory records,	)	
24.147.1107 cremation authorizations,	)	
24.147.1110 integrity of identification of	)	
human remains, 24.147.1111 cremation	)	
procedures, 24.147.1112 crematory	)	
prohibitions, 24.147.1503 requirements	)	
for sale of at-need, preneed, and	)	
prepaid funeral arrangements,	)	
24.147.2101 continuing education	)	
requirements – morticians, 24.147.2301	)	
unprofessional conduct, and the	)	
adoption of New Rule I preneed	)	
agreements – notification of closure or	)	
change of ownership – mortuary,	)	
branch establishment, or crematory	)	

TO: All Concerned Persons

1. On October 18, 2019, the Board of Funeral Service (board) published MAR Notice No. 24-147-40 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1769 of the 2019 Montana Administrative Register, Issue No. 20.

2. On November 13, 2019, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the November 15, 2019 deadline.

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

COMMENT 1: One commenter stated the board is moving rule language around but not clarifying the rules for the public.

RESPONSE 1: The board disagrees and believes the rule changes accomplish the board's intent to clarify the rules.

COMMENT 2: One commenter stated that all current requirements specific to mortician scope of practice should be left in the crematory rules because removing the language will confuse the public as to what is allowable under crematory, crematory operator, and crematory technician scopes of practice.

RESPONSE 2: Rules pertaining to the practice of mortuary science by morticians and mortician interns at mortuaries and branch establishments apply to these specific types of licenses, and not the scopes of practice for crematory technicians, crematory operators, or crematories. Changes to rules pertaining to mortuary science are outside the scope of this rulemaking. However, the board is open to future discussions with stakeholders regarding potential rulemaking on practice requirements and procedures for morticians, mortician interns, mortuaries, and branch establishments.

### **ARM 24.147.302**

COMMENT 3: A commenter asked why the definition in (1) for an "Authorization for Removal, Transportation, and Final Disposition of a Dead Body form" stops at what is described in (a) and (b) since the form provides for many other things including who authorized the cremation and the method of disposition.

RESPONSE 3: This form is developed by the Montana Department of Public Health and Human Services (DPHHS) and the board has no control over its content. Sections (1)(a) and (b) refer to the statutes that DPHHS implements that are relevant to the crematory and cremation process without detailing every facet of the form. As for the form of disposition, the crematory would only be accepting the body when the form of final disposition was cremation and it was authorized by the correct signatures. The board determined that further specification is not required.

COMMENT 4: Multiple commenters did not understand the use of the word "prior" in the definition of cremation authorization forms at (3) as being agreements between authorizing agents and crematories prior to receipt of human remains. The commenters further stated that because preneed cremation authorizations occur prior to receipt and are the authorizations to cremate, they are in fact cremation authorization forms.

RESPONSE 4: The board agrees with the commenters and is amending ARM 24.147.302(3) to replace "prior" with "pertaining." Additionally, the commenters are correct that the board inadvertently inserted a mutually exclusive statement into (3)(c) and is amending the rule to strike (c) in its entirety.

COMMENT 5: Multiple commenters stated the definition for cremation authorization form in (3) changes current meaning and practices, is confusing, and believed the definition may work for a standalone cemetery but not for a full-service mortuary/crematory. The commenters asked the board to strike the definition or further amend it.

RESPONSE 5: The board is assuming, based on context, that the comments reference a standalone crematory and not a cemetery. The board agrees the definition of cremation authorization form is confusing. See RESPONSE 4. However, the board does not have statutory authority to issue a dual license for a "full service mortuary/crematory." If the practice of mortuary science and cremation is conducted in the same physical location, the facility and owner(s) must have two separate licenses, one for a crematory and one for a mortuary or branch establishment. From a licensure standpoint there is no difference in legal requirements for a crematory located in the same space as a mortuary or a crematory located in a separate location that may or may not be owned by an individual who owns and licenses a mortuary.

COMMENT 6: One commenter stated that "agreement" in (3) was confusing since the current rules say anyone could sign a cremation authorization and provided the example of signing a napkin and saying, "I choose cremation." The commenter believed that would be a cremation authorization which is not necessarily an agreement because the person can change his or her mind.

RESPONSE 6: The definition for a cremation authorization form specifically refers to authorization between the authorizing agent and a licensed crematory. The commenter example is not accurate, and the example statement is not a cremation authorization.

COMMENT 7: Multiple commenters said the specific requirement in (3) that the cremation authorization form be signed prior to receiving the remains does not conform with current practices as many "homes" do not have the document signed until after the remains are received.

RESPONSE 7: See RESPONSE 4.

COMMENT 8: A commenter stated that the requirement in (5) for mortuaries and branch establishments to keep records of hazardous implant removal and disposal was interesting as the commenter was unaware the requirement was previously in rule.

RESPONSE 8: The board notes that this requirement previously existed in ARM 24.147.1112(2).

#### **ARM 24.147.401**

COMMENT 9: Multiple commenters opposed the fee increase due to its impact on small businesses and licensees, and the increased difficulty in attracting people to move to Montana and apply for licenses under the board. Commenters stated the state does not deserve any more funds until the board does what it is supposed to do and enforces the laws the licensees are paying to have enforced.

RESPONSE 9: The board conducted a small business impact analysis as part of the rulemaking process as required by 2-4-111, MCA, and acknowledged the potential small business impact in the proposal notice as required. However, having a small business impact does not negate the board's authority to conduct rulemaking to increase fees. As stated in the proposal notice, the board must raise fees to comply with the statutory provisions in 37-1-134, MCA, and continue board operations, which includes enforcing the laws under its jurisdiction. As to commenters' second point, the board incurs expenses to process, investigate, and where supported by the evidence and law, prosecute complaints against licensees for unprofessional conduct and against individuals for unlicensed practice. A significant portion of this work occurs outside of public view and may go unnoticed by licensees. Taking into consideration the public's comments, the board is amending the rule to reduce the fee increases to 45%.

COMMENT 10: Multiple commenters suggested that the proposed fee increases are not reasonable and might violate 2-4-111, MCA. The commenters also noted that if previous 2017 legislation had passed, it would have helped the board stay "in the black."

RESPONSE 10: See RESPONSE 9. Additionally, the board must operate under current statutes. Legislation that died in process during past legislative sessions is not law and is irrelevant and unrelated to the scope of this rulemaking.

COMMENT 11: Multiple commenters stated the funeral industry plays a public health role/benefit and licensees are compelled by state law to be responsible for the disposition of human remains and recordkeeping/reporting regarding vital statistics. As a result, the commenters asserted the state should bear the cost of regulation, not licensees.

RESPONSE 11: All professional licensing boards allocated to the department are mandated by 37-1-134, MCA, to set fees that provide the money usually needed for board operation for services that include licensing, reciprocity, renewals, applications, inspections, investigations, compliance, discipline, and audits. The department sets fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees applicable to all boards. The department collects fees on behalf of each board and deposits them in the state special revenue fund in the appropriate account for each board. Only the legislature can change this statute.

#### **ARM 24.147.507**

COMMENT 12: Multiple commenters appreciate the board making the rule changes necessary to implement House Bill 196 and remove the additional education requirements for morticians and mortician interns.

RESPONSE 12: The board appreciates all comments received during the rulemaking process.

**ARM 24.147.1105**

COMMENT 13: One commenter stated that removing "as applicable" from (2)(c) makes the rule impossible to follow because the commenter would not necessarily have disposition directions per (2)(c)(ii). The commenter further stated that (2)(c)(i) is just a restatement of the requirement for a cremation authorization form under (2)(b).

RESPONSE 13: See RESPONSE 4. Further, the board agrees that (2)(c) could cause confusion and is amending the rule accordingly.

COMMENT 14: One commenter believed an issue exists in (4) where it references the authorizing agent giving the crematory authority to dispose of the cremated remains in a cremation authorization form. The commenter stated the authorizing agents should not be dealing with the crematory directly because they are not licensed to do so.

RESPONSE 14: There is nothing in current board statutes, rules, or these proposed rules that prohibits an authorizing agent from dealing directly with a crematory. The commenter is correct that crematories and licensed crematory operators and technicians are still responsible for ensuring that all required signatures and authorizations are received prior to accepting bodies and conducting the actual cremation.

COMMENT 15: Multiple commenters opposed the reference to crematories providing funeral goods in (5), stating that it is contrary to Federal Trade Commission (FTC) requirements regarding providing goods and services. The commenters believed that crematories cannot provide funeral goods and services and only morticians can provide funeral goods and services. The commenters believed Montana should ensure its laws and regulations are in compliance with FTC laws.

RESPONSE 15: The FTC Funeral Rule references "funeral providers" and does not prohibit crematories from providing funeral goods and services. In fact, the introduction to the guidelines produced by the FTC to complement the rule states: "You are a funeral provider if you sell or offer to sell funeral goods and both types of funeral services. You do not have to be a licensed funeral director and your business does not have to be a licensed funeral home to be covered by the Funeral Rule. Cemeteries, crematories, and other businesses can also be 'funeral providers' if they market both funeral goods and services."

**ARM 24.147.1107**

COMMENT 16: A commenter believed the current rules say that if a person preplans and signs a cremation authorization then that would "stand up" and a child/authorizing agent cannot change that. However, the commenter stated that the

"disposition instructions" in the proposed rule contradict the definition of an authorizing agent.

RESPONSE 16: While the board is unable to provide legal advice, the commenter should note that 37-19-903(2), MCA, states: "The funeral prearrangements that are prepaid and contracted for with a licensed mortuary or the disposition directions may not be canceled or substantially revised *unless the cancellation or substantial revision has been ordered by a person appointed by the decedent in the prepaid funeral contract or the disposition directions as the person authorized to cancel or revise the terms of the prepaid funeral contract or the disposition directions.*" (emphasis added).

COMMENT 17: One commenter believed an issue exists in the cremation authorization form definition as cited in this rule and defined in ARM 24.147.302.

RESPONSE 17: The board is unsure of the commenter's specific concern with the definition. However, see RESPONSE 4.

COMMENT 18: One commenter believed that (1)(p) referencing cremation authorizations is "the same, same rule" that is "being taken out of one and it's in one just a little bit later."

RESPONSE 18: The board is unclear of the meaning of this comment.

#### **ARM 24.147.1110**

COMMENT 19: One commenter stated that removing from the crematory rules the language regarding mortician scope of practice and what only a licensed mortician can do make the rules more confusing.

RESPONSE 19: See RESPONSE 2.

COMMENT 20: A commenter believed the crematory rules should include what happens prior to a body arriving at a crematory.

RESPONSE 20: What occurs prior to a body arriving at a crematory is outside the jurisdiction of the crematory, crematory operator, and crematory technician and outside the scope of this rulemaking. See RESPONSE 2.

#### **ARM 24.147.1111**

COMMENT 21: A commenter pointed out that (2)(c) includes "if applicable" which is proposed to be stricken from ARM 24.147.1105 and expressed the same concerns.

RESPONSE 21: See RESPONSES 4 and 14. The board is not amending this rule but is amending ARM 24.147.1105 in response to comments.



## **ARM 24.147.1112**

COMMENT 22: Multiple commenters believe the references to morticians and what morticians can do should not be stricken from (1) as it can lead to misinterpretation.

RESPONSE 22: See RESPONSES 2 and 20.

## **NEW RULE I**

COMMENT 23: Multiple commenters agreed that licensees who are the selling party(ies) should notify the buyer(s) of the existence of preneed funeral arrangement agreements along with the requirement to provide proper documentation of those agreements to the buyer. However, several commenters opposed requiring the seller to notify all preneed funeral arrangement purchasers of the change in ownership. The commenters stated that notification requirement should be the sole responsibility of the new owner(s) because requiring the seller to notify the purchasers is redundant and could potentially confuse the public to receive notification from the seller and then the new owner.

RESPONSE 23: The board disagrees based on comparisons of information obtained from financial institutions and licensees since licensees began reporting on preneed trust accounts in March 2018. The licensee(s) selling should be required to notify those individuals with whom it made preneed funeral arrangements. The licensee(s) selling a mortuary or branch establishment is still a licensee who is held to the requirements under board laws which include proper management of the public's money. Once the sale occurs that responsibility shifts to the new owner licensee which is why it is necessary for both the seller (prior to the change in ownership) and the new owner(s)/licensee (within 30 days of change) to notify the purchasers.

4. The board has amended ARM 24.147.407, 24.147.507, 24.147.1107, 24.147.1110, 24.147.1111, 24.147.1112, 24.147.1503, 24.147.2101, and 24.147.2301 exactly as proposed.

5. The board has adopted New Rule I (24.147.1506) exactly as proposed.

6. The board has amended ARM 24.147.302, 24.147.401, and 24.147.1105 with the following changes, stricken matter interlined, new matter underlined:

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

(1) and (2) remain as proposed.

(3) "Cremation authorization form" means an agreement executed between an authorizing agent and a crematory, mortuary, or branch establishment ~~prior~~ pertaining to receipt of the human remains. A cremation authorization form is not any of the following:

(a) remains as proposed.

- (b) a coroner's authorization to cremate under 46-4-122, MCA; ~~or~~
- ~~(c) a preneed cremation authorization under 37-19-708, MCA; or~~
- (d) remains as proposed but is renumbered (c).
- (4) through (16) remain as proposed.

24.147.401 FEE SCHEDULE

(1) Facility application fees	
(a) Mortuary	\$600 <u>544</u>
(b) Mortuary branch facility	600 <u>544</u>
(c) Crematory	600 <u>544</u>
(d) Cemetery	2000 <u>1813</u>
(2) Facility inspection or reinspection fees	
(a) Mortuary	320 <u>290</u>
(b) Mortuary branch facility	320 <u>290</u>
(c) Crematory	320 <u>290</u>
(d) Cemetery	320 <u>290</u>
(3) Individual application fees	
(a) Mortician	600 <u>544</u>
(b) Crematory operator	480 <u>435</u>
(c) Crematory technician	480 <u>435</u>
(d) Mortician intern	528 <u>479</u>
(4) Activation of inactive license	
(a) Mortician	160 <u>145</u>
(b) Crematory operator	80 <u>73</u>
(c) Crematory technician	80 <u>73</u>
(5) Facility renewal fees (includes annual inspection)	
(a) Mortuary	720 <u>653</u>
(b) Mortuary branch facility	120 <u>109</u>
(c) Crematory	720 <u>653</u>
(d) Cemetery (five-year renewal)	2400 <u>2175</u>
(6) Individual renewal fees	
(a) Mortician - active	480 <u>435</u>
(b) Mortician - inactive	240 <u>218</u>
(c) Crematory operator - active	240 <u>218</u>
(d) Crematory operator - inactive	120 <u>109</u>
(e) Crematory technician - active	240 <u>218</u>
(f) Crematory technician - inactive	120 <u>109</u>
(7) through (9) remain as proposed.	

24.147.1105 CREMATORY RECORDS (1) through (2)(b) remain as proposed.

- ~~(c) one or both of the following:~~
- ~~(i) preneed cremation authorization executed in accordance with 37-19-708, MCA; and/or~~
- ~~(ii) (c) if applicable, disposition directions from a prepaid funeral contract as described in 37-19-903, MCA;~~
- (d) through (5) remain as proposed.

BOARD OF FUNERAL SERVICE  
JOHN TARR, PRESIDING OFFICER

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

/s/ BRENDA NORDLUND  
Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 7, 2020.

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

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

TO: All Concerned Persons

1. On January 17, 2020, the Board of Medical Examiners published MAR Notice No. 24-156-86 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 18 of the 2020 Montana Administrative Register, Issue No. 1.

2. On February 11, 2020, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. One comment was received by the February 14, 2020 deadline.

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

COMMENT 1: One commenter supported the proposed Community Integrated Health Care rules and thanked the board for expeditiously developing the rules. The commenter expressed support for the endorsement.

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

4. The board has amended ARM 24.156.1304, 24.156.1404, 24.156.1623, 24.156.2701, 24.156.2711, 24.156.2713, 24.156.2718, 24.156.2720, 24.156.2732, 24.156.2751, and 24.156.2771 exactly as proposed.

5. The board has adopted New Rule I (24.156.2753) exactly as proposed.

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

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

/s/ BRENDA NORDLUND  
Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 7, 2020.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In the matter of the adoption of                    ) NOTICE OF ADOPTION OF  
Temporary Emergency Rule I                    ) TEMPORARY EMERGENCY RULE  
pertaining to dumped milk related to        )  
the COVID-19 pandemic                        )

TO: All Concerned Persons

1. The Board of Milk Control is adopting Temporary Emergency Rule I for the following reasons:

A. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 2-2020.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 14, 2020, Governor Steve Bullock extended the emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 3-2020.

D. On March 15, 2020, Governor Steve Bullock issued a directive implementing Executive Orders 2-2020 and 3-2020 providing for measures to combat the spread of COVID-19 Novel Coronavirus stating that all non-residential public schools in Montana are closed through March 27, 2020.

E. On March 20, 2020, Governor Steve Bullock issued a directive implementing Executive Orders 2-2020 and 3-2020 providing for measures to combat the spread of COVID-19 via food and beverage services or casinos that stated all restaurants, food courts, cafes, coffeehouses, and other similar establishments offering food or beverage for on-premises consumption are closed to ingress, egress, use, and occupancy by members of the public.

F. On March 24, 2020, Governor Steve Bullock issued a directive implementing Executive Orders 2-2020 and 3-2020 extending closures and updating social distancing requirements and guidance.

G. On March 26, 2020, Governor Steve Bullock issued a directive implementing Executive Orders 2-2020 and 3-2020 providing measures to stay at home and designating certain essential functions.

H. On April 7, 2020, Governor Steve Bullock issued a directive implementing Executive Orders 2-2020 and 3-2020 extending certain directives through April 24, 2020.

I. The Board of Milk Control finds there is an immediate need to adopt this temporary emergency rule to protect the public welfare because of the emergency conditions of the COVID-19 pandemic.

J. The closures of schools and limitations on restaurants and other institutional users of milk have caused a significant decrease in the demand for milk in Montana. The Montana Milk Producers Association estimates a decreased milk consumption in Montana of 1,500,000 gallons for the months of March, April, and May 2020 based on current demand compared to March, April, and May 2019. Montana's dairy farmers continue to produce milk. Absent demand, some processors may not purchase their normal volumes of milk and the reduced demand may cause milk to be dumped by dairy farms, which may result in no payment to those dairy producers for that dumped milk. Uniform payment is an objective of milk market regulation that will not be achieved under these pandemic-caused circumstances. The number of dairy producers in Montana has been in decline. With a reduced market for their milk, more Montana dairy producers could go out of business. A temporary emergency rule pertaining to the definition of "dumped milk" will help ensure that there are sufficient dairy producers still in business when demand returns after the COVID-19 pandemic. There is a reasonable necessity to immediately adopt a temporary emergency rule to allow milk dumped because of the chaotic market conditions caused by the COVID-19 pandemic to be treated as surplus milk for the purpose of uniform payment to Montana pool producers.

K. This emergency rule would allow processors to dump milk because of the chaotic market conditions caused by the COVID-19 pandemic or to partially process milk to result in income to producers and dump byproduct. If processors partially process milk to concentrate butterfat, the remaining byproduct that is dumped after separation could be defined as surplus milk under the temporary emergency rule. If the dumped milk could not be defined as surplus milk, as under the current rule, processors would decline to take delivery of some individual milk loads of raw milk, causing individual producers to dump milk and individually bear the entire cost. As a result, there would be unequal impact of a market condition facing Montana's statewide pooling arrangement at a level that would significantly threaten the immediate viability of those operations. Allowing the economic impact to be spread to all Montana pool producers would help avoid permanent closure of Montana dairies, which have supplied 85% of Montana's fluid milk demand, thereby ensuring Montana citizens' supply of milk is adequate. The emergency rule would cause any future government payments made to the milk industry for dumped milk subject to this rule to be paid in a uniform manner to all pool producers through the bureau's quota and excess price determination.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock 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 temporary emergency rule is effective April 9, 2020, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

NEW RULE I EMERGENCY RULE RELATED TO THE COVID-19 PANDEMIC AND DUMPED MILK (1) This rule is only effective when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) The definition of "dumped milk" or "dumped" provided in ARM 32.24.150(9) includes a new subsection (a) that states:

"(a) 'Dumped milk' or 'dumped' does not include milk dumped because of chaotic market conditions when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic."

(3) The definition of "surplus" provided in ARM 32.24.150(42) includes a new subsection (c) that states:

"(c) 'Surplus' includes milk dumped because of chaotic market conditions when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic."

(4) ARM 32.24.523 includes a new section (6) that states:

"(6) As used in this rule, 'proceeds' includes all government payments for milk dumped because of the chaotic market conditions when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic."

(5) ARM 32.24.523 includes a new section (7) that states:

"(7) When a pool producer receives proceeds from government payments for milk dumped because of the chaotic market conditions when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic, the pool producer must make payment to the pool settlement fund in the same amount if a pool handler's distributor report included the producer's dumped milk in receipts and utilization as dumped milk. Such payments from a pool producer must be included as a positive adjustment in ARM 32.24.513(1)(b) in the month funds are deposited in the pool settlement fund."

(6) The intention of (5) is that it include in the poolwide utilization value only government payments for milk dumped because of the chaotic market conditions when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic. Any government payments to pool producers or pool handlers to offset low market prices are not included.

AUTH: 2-4-303, 81-23-103, 81-23-104, 81-23-302, 81-23-402, MCA

IMP: 2-4-303, 10-3-104, 81-23-101, 81-23-102, 81-23-103, 81-23-302, 81-23-402, MCA



5. The Department of Livestock 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 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; or may be made by completing a request form at any rules hearing held by the department.

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

/s/ W. Scott Mitchell  
W. Scott Mitchell  
Chair  
Board of Milk Control

/s/ Cinda Young-Eichenfels  
Cinda Young-Eichenfels  
Rule Reviewer  
Department of Livestock

Certified to the Secretary of State April 9, 2020.

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

In the matter of the adoption of	)	NOTICE OF ADOPTION OF
Temporary Emergency Rules I and II	)	TEMPORARY EMERGENCY RULES
pertaining to Renewable Resource	)	
Grant and Loan and Reclamation	)	
Development Grant Application	)	
Deadlines related to the COVID-19	)	
pandemic	)	

To: All Concerned Persons

1. The Department of Natural Resources and Conservation is adopting the following emergency rules for the following reasons:

A. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana with regards the COVID-19 pandemic in Executive Order 2- 2020.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 14, 2020, Governor Steve Bullock extended the emergency in the State of Montana with regards the COVID-19 pandemic in Executive Order 3-2020.

D. There is reasonable necessity to immediately adopt temporary emergency rules to extend grant application deadlines to protect the public health, safety, and welfare, because of the emergency conditions of the COVID-19 pandemic. There is reasonable necessity to immediately adopt temporary emergency rules pursuant to 10-3-104, MCA, affecting the operation of the Renewable Resource Grant and Loan Program and the Reclamation Development Grant Program. There is reasonable necessity to allow additional time to complete applications for applicants including local governments, tribal governments, and private persons due to the COVID-19 pandemic. Extension of the application deadline will allow for additional time to observe the recommended prevention measures to prevent the spread of COVID-19. The May 15 of even year deadline is defined in ARM 36.17.608 for the Renewable Resource Grant and Loan Program and in ARM 36.19.112 for the Reclamation and Development Grant Program.

2. The temporary emergency rules are effective April 6, 2020, when this temporary emergency rule notice is filed with the Secretary of State.

3. The text of the temporary emergency rules provides as follows:

NEW RULE I EMERGENCY RULE RELATED TO COVID-19  
APPLICATIONS SUBMITTAL DEADLINES (1) This rule is only effective when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) Applications for the Renewable Resource Grant and Loan Program

submitted to the bureau must be postmarked on or before June 1, 2020. The department will provide guidance on electronic application submissions.

(3) Applications for the Reclamation Development Grant Program submitted to the bureau must be postmarked on or before June 1, 2020. The department will provide guidance on electronic application submissions.

AUTH: 2-4-303, 10-3-104, MCA

IMP: 2-4-303, 10-3-104, MCA

NEW RULE II REGULAR APPLICATION DEADLINE RULES TO BE CONSTRUED TO GIVE EFFECT TO EMERGENCY RULES RELATED TO COVID-19 PANDEMIC (1) This rule is only effective when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) The department shall apply existing rules, except as modified by NEW RULES I and II, to maintain consistency during the emergency.

AUTH: 2-4-303, 10-3-104, MCA

IMP: 2-4-303, 10-3-104, MCA

4. The rationale for the temporary emergency rules is as set forth in paragraph 1.

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 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 Aliselina Strong, 1539 Eleventh Avenue, PO Box 201601, Helena, MT 59620; fax (406) 444-2684; e-mail [astrong@mt.gov](mailto:astrong@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

6. The bill sponsor contact requirements of 2-4-302, MCA, do not apply pursuant to 2-4-303, MCA.

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

/s/ Danna R. Jackson  
DANNA R. JACKSON  
Rule Reviewer

Certified to the Secretary of State April 6, 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 AND  
ARM 37.80.101, 37.80.102,                ) REPEAL  
37.80.201, 37.80.202, 37.80.205,        )  
37.80.316, 37.80.317, and 37.80.501,   )  
and the repeal of 37.80.206               )  
pertaining to child care                 )

TO: All Concerned Persons

1. On January 17, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-904 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 32 of the 2020 Montana Administrative Register, Issue Number 1.

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

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

COMMENT #1: A commenter asked how a payment will work when a child attends 85% or more of the authorized amount and a parent is able to determine the child's need for child care as stated in Policy Section 6-3.

RESPONSE #1: The department believes it is in the child's best interest to have the parent determine the child's need for child care. Policy Section 6-3 includes a weekly and daily limit for authorized child care.

COMMENT #2: One commenter asked if a child care provider will have to enter the time in and out for a child to receive the adjusted rate for non-traditional care described in ARM 37.80.205.

RESPONSE #2: The department will require child care providers to invoice for a child's actual time in and time out as outlined in Policy Section 6-7.

COMMENT #3: A commenter asked whether there would be a new statewide provider reimbursement rate for non-traditional care.

RESPONSE #3: The department will not have a different statewide provider reimbursement rate for non-traditional care. Instead, an adjusted rate will be added to child care hours during non-traditional time as defined in ARM 37.80.102.

COMMENT #4: A commenter asked what the definition for excessive unexplained absences were.

RESPONSE #4: The department defines unexplained absences in Policy Section 6-7, page 3 of 4. An unexplained absence occurs when a child care provider has a child absent for five or more consecutive days, and the provider does not know why the child is absent.

COMMENT #5: A commenter asked whether a case can be terminated (closed) when there is a loss of contact with the family. The commenter gave several examples of mail being returned and an obsolete phone number or email address.

RESPONSE #5: The department outlines in Policy Section 6-5 required changes that must be reported to a CCR&R agency. A family is required to report a change in mailing address, residential address, or phone number within ten calendar days. Policy Section 6-5 states changes not reported in a timely manner will be evaluated, but failure to report does not necessarily cause a loss of eligibility. A family's failure to report would be evaluated on a case-by-case basis.

A change in email address can be reported by a parent, but it is not required. A change in email address has no effect on the family's eligibility.

COMMENT #6: A commenter asked if the payment for the entire monthly amount listed on the authorization plan when a child attends at least 85% of the authorized time listed on the authorization plan applies to only full time care and the provider types: Family, Friend, and Neighbor (FFN) and Relative Care Exempt (RCE) provider.

RESPONSE #6: The department intends that the entire monthly amount payment applies to any number of authorized hours on an authorization plan. The rule change is about the child's attendance being at least 85% of the authorized time to receive the entire monthly amount as a payment. The payment rule change will apply to all child care provider types.

COMMENT #7: A commenter asked what would occur for a school-age child on a day when school is out if the payment is made for the entire monthly amount listed on the authorization plan when a child attends at least 85% of the authorized time listed on the authorization plan.

RESPONSE #7: The department is required to pay a day for a school-age child on a day when school is out because a day when school is out is considered a temporary change. A temporary change is covered in ARM 37.80.202(13).

COMMENT #8: A commenter asked if payments will be allowed to exceed the authorization plan to accommodate a school-age child when school is out.

RESPONSE #8: The department has removed a CCR&R agency's ability to override an invoice when the family exceeds the amount of care authorized in Policy Section 6-3. As outlined in Response #7, if a school-age child has a day when school is out that is a school holiday or spring break, it is considered a temporary break and child care is paid.

COMMENT #9: A commenter stated there may be a negative impact with Absent Days being removed for a child's occasional absence.

RESPONSE #9: The department believes that payment for the entire monthly amount listed on the authorization plan when a child attends at least 85% of the authorized time will allow a child to be absent for a few days each month.

COMMENT #10: A commenter stated there may be a negative impact on parents that share custody of children receiving the Best Beginnings Child Care Scholarship when a child attends at least 85% of the authorized time.

RESPONSE #10: The department believes that the impact of Best Beginnings Child Care Scholarship for a child of shared custody will remain the same. Currently, only actual attendance within the authorization plan is paid for a child. In the case when a child has shared custody, one or both parents could be eligible under the Best Beginnings Child Care Scholarship. The child will be authorized for care based on the child's needs.

COMMENT #11: A commenter asked if Family, Friend, and Neighbor (FFN) and Relative Care Exempt (RCE) providers would be able to receive adjusted rates for providing non-traditional care.

RESPONSE #11: The department intends this payment rule change to apply to all child care providers. If a child care provider provides at least one hour of care with non-traditional hours, then the provider will be paid an adjusted amount.

COMMENT #12: A commenter asked if a parent can include parental sleep time when determining a child's need for authorized hours of child care.

RESPONSE #12: The department states in Policy Section 6-3 that a parent can choose to have child care during work hours or rest time, which could include parental sleep time. The parent cannot choose to have child care during both work and rest time.

COMMENT #13: A commenter asked if a parent will be able to request more than 50 hours per week of authorized child care.

RESPONSE #13: The department may approve authorized child care for more than 20 hours per day and 50 hours per week. A request will be evaluated on a case-by-case basis.

COMMENT #14: A commenter asked what would occur if a family has an unpaid copayment at annual redetermination or with a new application.

RESPONSE #14: The family would be ineligible for the Best Beginnings Child Care Scholarship until a receipt of payment for the unpaid copayment is received. A case will not close during a 12-month eligibility period if there is an unpaid copayment.

COMMENT #15: A commenter stated there may be a negative impact for child care providers if there is no penalty for an unpaid copayment.

RESPONSE #15: Federal regulations prohibit the termination of a family's eligibility during a 12-month eligibility period for an unpaid copayment. The department believes verifying a family has no unpaid copayments at initial application and annual redetermination is the best option to enforce it as an eligibility requirement.

COMMENT #16: A commenter supported the proposed rule changes because it would allow families flexibility and to pick up a child earlier in the day without an added expense.

RESPONSE #16: The department agrees with the comment.

4. These rule amendments and repeal are effective June 1, 2020.

/s/ Flint Murfitt  
Flint Murfitt  
Rule Reviewer

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

Certified to the Secretary of State April 7, 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 AND
ARM 37.85.106, 37.87.702,	)	REPEAL
37.87.703, 37.87.802, 37.87.805,	)	
37.87.807, 37.87.809, 37.87.823,	)	
37.87.903, 37.87.1011, 37.87.1202,	)	
37.87.1217, 37.87.1223, 37.87.1226,	)	
37.87.1351, 37.87.1402, 37.87.1405,	)	
37.106.1902, 37.106.1906, and	)	
37.106.1935 and the repeal of ARM	)	
37.87.1313, 37.87.1314, and	)	
37.87.1315 pertaining to updates for	)	
targeted case management,	)	
outpatient therapy, and reference	)	
revisions	)	

TO: All Concerned Persons

1. On February 28, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-911 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 372 of the 2020 Montana Administrative Register, Issue Number 4.

2. The department has amended the following rules as proposed: ARM 37.85.106, 37.87.702, 37.87.703, 37.87.802, 37.87.805, 37.87.807, 37.87.809, 37.87.903, 37.87.1011, 37.87.1202, 37.87.1217, 37.87.1223, 37.87.1226, 37.87.1351, 37.87.1402, 37.87.1405, 37.106.1902, 37.106.1906, and 37.106.1935.

3. The department has repealed the following rules as proposed: ARM 37.87.1313, 37.87.1314, and 37.87.1315.

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

37.87.823 TARGETED CASE MANAGEMENT SERVICES FOR YOUTH  
WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER REQUIREMENTS

(1) through (5) remain as proposed.

(6) Upon admission to TCM services and prior to all treatment team meetings of TCM services, the targeted case manager shall meet face-to-face with the youth's family or caregivers to complete a family treatment team meeting preparation checklist and questionnaire. If the meeting cannot be accomplished face-to-face, the targeted case manager shall document in the youth's file the reason for conducting the meeting through phone contact or telehealth. The checklist and



questionnaire must contain and document the following components:

(a) through (7) remain as proposed.

(8) In addition to the requirements outlined in (7), individual treatment plans must include:

(a) identification of natural supports or treatment goals intended to develop natural supports; and

(b) through (11) remain as proposed.

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

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, MCA

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

COMMENT #1: Several commenters offered support for the proposed updated rules and thanked the department for addressing the issues.

RESPONSE #1: The department thanks providers for this feedback and believes the updated rules will enhance the quality of services provided to youth and families while managing a fiscally sound case management program.

COMMENT #2: One commenter questioned whether the current COVID-19 emergency would impact the effective date for the updates to the rules.

RESPONSE #2: COVID-19 will not impact any of the changes listed to occur retroactively to March 1, 2020, including rate changes. The department agrees that providers may need additional time to implement other changes as a result of COVID-19, and the effective date will be extended to November 1, 2020.

COMMENT #3: One commenter raised concerns that the proposed Targeted Case Management (TCM) rate for youth with Serious Emotional Disturbance (SED) is too low and will make it challenging for providers to build a new client base.

RESPONSE #3: The department worked with multiple providers to identify the cost of providing TCM for youth with SED, including the additional requirements in the proposed rule. The department did not identify any additional costs associated with providing TCM for youth with SED and therefore will not make adjustments to the rate.

COMMENT #4: A commenter raised concern that the mechanism to limit caseload is unclear and there is no cap for caseloads in the rule, or any means by which a TCM manager would be able to accept or refuse cases depending on current caseload.

RESPONSE #4: The department's goal with this rule is to ensure flexibility for providers to ensure youth receive the appropriate treatment. For example, with

caseload caps at times of turnover, providers have reported issues with having a provider available to continue to serve the youth. In addition, when reviewing this language with the workgroup it was discussed that a manageable caseload size can vary based on the complexity of the individual case, and capacity of the individual case manager. For these reasons the department recommends allowing providers flexibility to make this decision based on the targeted case manager's skill level and individual case complexities. In addition, this language is being adopted from TCM standards of a nationally recognized accreditation agency.

COMMENT #5: One commenter expressed concern that the definition of "natural supports" includes both services that are mandatory and services that are voluntary and that voluntary services may be stopped at any time.

RESPONSE #5: The department agrees that requirements for those with legal responsibility of the youth need to be differentiated from supports provided by community members and other natural supports. The department believes this is expressed throughout the rules as written. The administrative rules for TCM for Youth with SED focus on the youth's family or caregivers; however, all supports outside of provider care are intended to be included in "natural supports." The department's goal with the term "natural supports" is to ensure providers are identifying individuals and organizations who support the youth outside of the provider community and identify and include them in the treatment plan. Regarding the concern that natural supports can be entirely voluntary, the rules require treatment plans to be updated every 90 days or when the youth's condition changes. Thus, an updated treatment plan would be required if the youth's natural support system changes.

COMMENT #6: The department received several comments related to the current COVID-19 emergency situation.

RESPONSE #6: The department is pursuing COVID-19 updates through other avenues as they do not relate to MAR Notice No. 37-911.

COMMENT #7: A commenter asked the reason for removing ICD-10 codes from the manual and requested that the codes remain.

RESPONSE #7: The department proposes removing references to ICD-10 codes in the manual to increase flexibility to utilize updated ICD-10 codes as they become available, without delay caused by an administrative rule process. The department will continue to publish the diagnoses in the manual, and the ICD-10 codes will be posted separately on the Children's Mental Health Bureau (CMHB) website to ensure the list can be updated as codes change.

COMMENT #8: One commenter had concern that the service requirements for Therapeutic Group Homes (TGH) on page 26 of the manual cuts off at (f).

RESPONSE #8: The full item (f) reads, "submit a discharge notification form within ten business days of the discharge of a youth from the TGH which can be found at CMHB Forms." There are not any proposed changes in the area that was cut off. The department appreciates the commenter bringing this to our attention and it will be corrected in the published manual.

COMMENT #9: A commenter stated that there is a section in the proposed manual that still references a limit of 10 outpatient therapy sessions for youth without an SED.

RESPONSE # 9: The department appreciates the commenter bringing this to our attention and it will be corrected in the published manual.

COMMENT #10: A commenter requested clarification regarding how the 60 consecutive days of TCM will work for a youth placed in a PRTF if discharge was planned and then the youth regressed.

RESPONSE #10: If there are extenuating circumstances and the youth does not discharge from PRTF as outlined in the discharge plan due to a change in condition and the medical records clearly document the reason for the change in the discharge plan, the department will not recover reimbursement already paid for the services that were provided when the youth's plan documented an anticipated discharge within 60 days. However, federal requirements allow a maximum of 180 days of TCM services prior to discharge, even if the discharge plan changed. The department will not reimburse providers for TCM services provided beyond 180 days prior to discharge.

COMMENT #11: One commenter requested Mental Health Center (MHC) rules also be updated to align with proposed ARM 37.87.823 to require treatment plans be updated within 21 days of admissions.

RESPONSE #11: MHC rules currently allow for the individualized treatment plan be completed within 5 contacts, or within 21 days of the first contact, whichever is later. The department will not make the suggested change at this time; however, we will consider this change in future updates.

COMMENT #12: A commenter requested the department indicate which regulatory requirements mandate compliance for reimbursement purposes versus those regulatory requirements that pertain to licensing requirements.

RESPONSE #12: Reimbursement requirements are currently located in program rules as well as licensing rules; therefore, any of these rules may be used for purposes of Medicaid SURS reviews. The department recognizes potential confusion and plans to address in future rule changes.

COMMENT #13: A commenter inquired about the process for getting approval for a standardized assessment tool.

RESPONSE #13: The department will post approved standardized assessment tools on the CMHB website. Currently the approved assessment tools are the Child and Adolescent Service Intensity Instrument (CASII) and the Early Childhood Service Intensity Instrument (ECSII).

COMMENT #14: A commenter supports the idea of preparing families for treatment teams per ARM 37.87.823(6)(a) through (e), but stated some potential concerns. Some families may not be able or willing to meet twice and other families such as CPS-involved families may not be located in the same area as the provider, making it challenging to attend two meetings.

RESPONSE #14: The department agrees with the commenter's concerns and will add clarifying language to the final rules stating that the checklist should be completed face-to-face, unless the family or caregiver is unable to meet face-to-face. If phone contact is used in lieu of a face-to-face meeting, the youth's file should demonstrate the inability of the family or caregiver to meet face-to-face.

COMMENT #15: A commenter raised concerns that it may be challenging to demonstrate compliance with ARM 37.87.823(7)(b), pertaining to respecting the youth's family's culture.

RESPONSE #15: The department recognizes that documenting compliance of this requirement may be difficult, and as such, will work with providers to develop a worksheet that can be completed upon admission to TCM services.

COMMENT #16: A commenter requested clarification on the 20 hours of training required in ARM 37.106.1935(2)(d), specifically if training such as CPR, First Aid, HIPAA, and Workplace Harassment count toward this training.

RESPONSE #16: The intent of this section is to focus on competencies in the specific skills listed in (i) and (ii); therefore, standard onboarding trainings such as CPR, First Aid, HIPAA, and Workforce Harassment would not meet this requirement.

COMMENT #17: A commenter agreed with the importance of including natural supports in treatment team planning and suggested updating the wording in ARM 37.87.823(8)(a) to include natural supports identified or treatment goals associated to the development of a natural support system.

RESPONSE #17: The department agrees with the recommended update and will make the recommended change in the final rule.

COMMENT #18: One commenter suggested the department remove the frontier differential rate due to administrative complexities and raise the standard rate.

RESPONSE #18: One of the department's goals is to increase access for youth residing in frontier areas. Due to the nature of case management services,

additional costs are associated with serving youth in frontier areas. The frontier rate is meant to reimburse providers for additional costs to serve youth and families in remote areas. Providers will bill with a modifier if the youth's home community is within one of the 46 frontier counties. The department will evaluate the effectiveness of this method and may make revisions at a later date, if appropriate.

COMMENT #19: The department received several comments that were not applicable to the rules being amended or repealed in this notice.

RESPONSE #19: Comments not related to the rules being amended or repealed will not be responded to in this notice.

6. The department intends that the following rule amendments are to be retroactively effective to March 1, 2020: the proposed fee schedule, ARM 37.85.106; proposed changes to the manual adopted pursuant to ARM 37.87.903 relating to home support services and to the diagnosis codes and list of SED; and increasing the limit for outpatient therapy from 10 to 24 for youth who do not have an SED, ARM 37.87.903.

7. All remaining rule amendments and rule repeals are to be effective November 1, 2020.

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

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

Certified to the Secretary of State April 7, 2020.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 42.12.301, 42.12.302, and ) REPEAL  
42.12.307, and the repeal of ARM )  
42.12.303 and 42.12.306 pertaining )  
to resort areas, resort determinations, )  
and resort licenses )

TO: All Concerned Persons

1. On December 27, 2019, the Department of Revenue published MAR Notice No. 42-1014 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 2322 of the 2019 Montana Administrative Register, Issue Number 24.

2. On January 22, 2020, a public hearing was held to consider the proposed amendment and repeal. No proponents were present, no proponent oral testimony was received, and the department received no written comments in support. The following opponents were present and provided oral testimony: Jessie Luther, Taylor Luther Group, PLLC, on behalf of the Hospitality Development Association of Montana (HDAM); Joel Silverman, Silverman Law Office, PLLC; and Neil Peterson. The following persons also provided written comments: Jessie Luther, Taylor Luther Group, PLLC, on behalf of HDAM; Joel Silverman, Silverman Law Office, PLLC; and Senator Terry Gauthier, Senate District 40, sponsor of Senate Bill 358 (2019) (SB 358).

3. The department has amended ARM 42.12.302 and repealed ARM 42.12.303 and 42.12.306 as proposed.

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

42.12.301 RESORT LICENSES (1) through (4) remain as proposed.  
~~(5) The licensee shall maintain records of all alcoholic beverage deliveries made on the resort area. The delivery records must be retained for three years. The records shall include:~~  
~~(a) the date and time the delivery occurred;~~  
~~(b) the quantities and brands of alcoholic beverages delivered;~~  
~~(c) the address of the accommodation unit;~~  
~~(d) the name of the employee delivering the alcoholic beverages; and~~  
~~(e) the name of the individual who accepted the alcoholic beverages at the time of delivery.~~

AUTH: 16-1-303, MCA

IMP: 16-4-201, 16-4-213, MCA

42.12.307 RESORT AREA DETERMINATION APPLICATION PROCESS

(1) A developer or landowner seeking a resort area designation shall submit to the department, at its sole expense:

(a) through (c) remain as proposed.

(d) processing fees as provided in ARM 42.12.111; ~~and~~

(e) an appraisal from an appraiser, as defined in 37-54-102, MCA, which provides a detailed analysis of the current actual valuation of the resort or recreational facilities, including land and improvements, of not less than \$1 million, at least half of which valuation must be for a structure or structures within the resort area; and

~~(e) (f) any additional information the department may request other reasonably necessary documents for the department to reach a final decision.~~

~~(2) The valuation must be not less than \$1,000,000, and at least half of which valuation must be for a structure or structures within the resort area.~~

~~(3) The department shall determine the appraised market value of the resort area.~~

~~(4) If the developer or landowner disagrees with the department's determination of actual market value, the applicant can submit its own appraisal for department consideration.~~

~~(5) (2)~~ If the documents in (1) are not provided, the department will notify the developer or landowner of the missing items and request submission prior to the hearing date.

AUTH: 16-1-303, MCA

IMP: 16-4-212, MCA

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

COMMENT 1: Messrs. Peterson and Silverman, and Ms. Luther, thanked the department for its efforts to put forward proposed rulemaking to implement SB 358 amendments pertaining to resort areas, resort determinations, and resort licenses.

Mr. Silverman commented his opinion, and Ms. Luther concurred, that the department could have improved the development of the proposed rule changes through meetings with, or prior input from, alcoholic beverage industry and resort area stakeholders.

RESPONSE 1: The department appreciates the comments provided. The Montana Administrative Procedure Act (MAPA) affords all interested persons, including industry stakeholders, the opportunity to attend rules hearings and/or to submit data, testimony, or comments to the department for its consideration and response before the conclusion of the comment deadline, and within a statutory schedule. In most instances, the department believes MAPA process works well and is sufficient.

COMMENT 2: Mr. Peterson asked the department whether the permissible delivery of alcoholic beverages in proposed ARM 42.12.301(3) includes guests who are renting the accommodations units.

RESPONSE 2: An accommodation unit is defined in 16-4-213(2)(d), MCA, and means a unit that is available for short-term guest rental. The statute continues to describe the types of included rental units. Since proposed ARM 42.12.301(3) is consistent with statute, delivery to short-term guests is permissible as long as the accommodations unit is a type provided in statute and the guests are neither the owner of the unit or a long-term tenant or occupant because those persons are not a short-term guest.

COMMENT 3: All commenters challenged the necessity, purpose, and statutory authorization of the department's proposal in proposed ARM 42.12.301(5) to include transaction-specific information of alcoholic beverage deliveries to a guest of an accommodation unit on a resort area. Each of the commenters provided their own questions as to the purpose of the records retention requirements and stated their opinions as to the privacy complications such a requirement would introduce for the resort licensees, for the resort guests, and the department's use of that information.

Senator Gauthier and Ms. Luther further stated that alcoholic beverage delivery transaction compliance in 16-4-213(5), MCA, only requires determination of the presence of the purchaser, that the purchaser is the legal age to purchase alcoholic beverages, and that the purchaser is not actually, apparently, or obviously intoxicated.

RESPONSE 3: The department has amended ARM 42.12.301 upon adoption without proposed (5) in the rule.

COMMENT 4: Ms. Luther commented that ARM 42.12.301(4)(a) restricts " . . . [a]ny non-resort licensee whose business is located on the resort area . . . " from delivering alcoholic beverages in a resort area. HDAM requests the department entertain an exception in the instance where the resort licensee has the same ownership as a non-resort alcohol license operating within the resort area; as employees under either license should be able to deliver alcoholic beverages to accommodation units. Ms. Luther also comments that the service restriction in (4)(b) does not accurately reflect how hospitality participants currently engage in activities in certain resort areas; and in (4)(c), that the retail sales restrictions cross-referenced in Title 16, MCA are overbroad and should be more specifically stated for applicability to resort licensees.

Similar to Ms. Luther, Mr. Silverman asked whether a licensee can serve to other places within the resort, that are not a resort area accommodation unit.

RESPONSE 4: The department's proposed restrictions in ARM 42.12.301 are a necessary reiteration of 16-4-213, MCA, which confines delivery for resort licensees only and to short-term guests in accommodation units on the designated resort area property only. Deliveries to areas outside of accommodation units are not



permissible and the department cannot create an exception as any modification to these requirements requires legislation.

As for Ms. Luther's comments regarding the overbreadth of licensing requirements for resort licensees, the department directs Ms. Luther to 16-4-213(4) and (4)(a), MCA, which state that " . . . [a] resort retail all-beverages license within the resort area . . . is subject to all other requirements of an all-beverages license in this code." The Montana Alcoholic Beverage Code (MABC) is codified in the Montana Code Annotated at Title 16, and the applicable portions that pertain to resort licensees can be somewhat narrowed to chapters 3, 4, and 6, which the department contends is the smallest statutory cross-reference of authority that it can cite without exclusion.

For licensee assistance, the department's Alcoholic Beverage Control Division (ABCD) offers many different training resources and publications to assist in the education of alcoholic beverages licensees, which can be found at <https://mtrevenue.gov> or through contacting the ABCD directly. The department encourages all licensees involved in this industry to become informed and to seek education or additional information, as needed.

COMMENT 5: All commenters stated their respective objections to the language of proposed ARM 42.12.307(1)(e) that requires developer or landowner seeking a resort area designation shall submit to the department " . . . [a]ny additional information the department may request." Senator Gauthier stated the requirement is overbroad and contrary to legislative intent. Mr. Peterson and Ms. Luther also commented that the purpose of administrative rules is to further clarify statutory requirements, not greatly expand the department's authority granted in statute to request information.

RESPONSE 5: The department has further amended ARM 42.12.307 on adoption which restates the requirement in (1)(e) to include " . . . reasonably necessary documents for the department to reach a final decision." The department contends such a provision is necessary since every application is different, as is the information the department may require to fully qualify and approve each resort-determined area.

COMMENT 6: Messrs. Peterson and Silverman, and Ms. Luther, had several questions or concerns regarding the department's proposals contained in ARM 42.12.307(2) through (4) pertaining to the resort area determination criteria and valuation or appraisal processes of structures or improvements.

Messrs. Peterson and Silverman questioned the department's proposed appraisal processes described in proposed ARM 42.12.307(3) and (4), whether the appraisals would be formal appraisals, whether valuation is based on an applicant's "book value," and how the department would determine "current actual market value."

Ms. Luther similarly commented that ARM 42.12.307(2) through (4) are related to the value of the resort area, but the language in each section is inconsistent in addition to being inconsistent with the statute, creating confusion as to the true meaning of the requirement. ARM 42.12.307(2) refers to a valuation of

not less than \$1,000,000; (3) uses appraised market value of the resort area; and (4) describes disagreement between the department and applicant over the actual market value. Ms. Luther recommends the department revise the rule sections to use the same language as statute - current actual valuation - and define exactly what that value is and how it is determined.

RESPONSE 6: In response to the questions and comments received, the department has amended ARM 42.12.307, upon adoption, through the removal of proposed (3) and (4). In doing so, the department will continue its current appraisal submission requirement of the applicant - present in ARM 42.12.303 prior to its repeal in this rulemaking - as final amendments to ARM 42.12.307(1) and (1)(e). Subsection (1)(e) incorporates text from proposed (2), which has been removed, and continues the appraisal reference of "current actual market value," which was historically in ARM 42.12.303 and is provided in 16-4-212(2)(a)(ii), MCA. The remaining rule sections are renumbered, accordingly.

The department believes the amendments address the commenters' concerns with rule and statutory language consistency and the department's proposed appraisal processes, in favor of the continuation of the department's role as a reviewer and approver of a developer or landowner's valuation of a prospective resort area.

COMMENT 7: Mr. Peterson commented that the appraisal process in ARM 42.12.307(3) and (4) should be optional, at the request of the applicant, and he questions whether the department has the resources to undertake such appraisals.

RESPONSE 7: The department directs Mr. Peterson to Response #6.

COMMENT 8: Mr. Silverman asks what type of appraisal or valuation the department is going to find acceptable for satisfying a "complete application" definition. Is the department going to conduct an appraisal for every resort application? Would the department accept an "evaluation" appraisal report? May the resort owner/taxpayer submit its own appraisal report, without having to wait for the department's appraisal?

Ms. Luther agreed with Messrs. Peterson and Silverman and suggests the department rely on documentation other than an actual appraisal to determine that the value of the improvements and land exceed the \$1 million threshold.

Mr. Silverman also asks the department to clarify whether the property value is used only for \$1 million threshold, or if it can also be applied to the \$30 million valuation.

RESPONSE 8: The department directs all commenters to Response #6.

In response to Mr. Silverman's additional question whether the valuation process provided in 16-4-212, MCA, and ARM 42.12.307 can be applied to the \$30 million valuation for existing resort areas, the department responds "no."

The process described in 16-4-212, MCA, and ARM 42.12.307 pertain to applications and valuations of new resort areas. The \$30 million current actual

valuation threshold applies to approved resort areas and the issuance of up to ten additional all-beverages licenses pursuant to 16-4-213, MCA. Substantiating the \$30 million resort area valuation is a license-specific application requirement.

The department acknowledges the possibility that additional rulemaking may be necessary to establish applicant appraisal submission guidelines in connection with 16-4-213, MCA, resort license applications, but this was not contemplated and exceeds the scope of this rulemaking.

Because the number of potential applicants that fall under the resort criteria of 16-4-213(2)(b), MCA, is small at this time, the department will monitor whether its existing license application requirements and approval processes are sufficient or if additional rulemaking is necessary.

COMMENT 9: Messrs. Peterson and Silverman, and Ms. Luther, further questioned how the department will address the 16-4-213(2)(b), MCA, valuation process for the issuance of licenses in an existing, approved resort area with a perimeter containing at least 1,000 contiguous acres that has a current actual valuation of completed recreational facilities, including land and improvements, of not less than \$30 million.

Mr. Silverman questioned whether the department will be able to value a resort area for value if it exceeds \$30 million and is the determination of value for the property or is it cost-based? He also asks what appraisal methodology the department will implement.

RESPONSE 9: The department directs all commenters to Responses #6 and #8.

COMMENT 10: Messrs. Peterson and Silverman, and Ms. Luther commented that it is unclear, in the case of a disagreement over valuation between the department and the applicant, whether formal protest or some other process must be undertaken prior to the applicant's ability to submit its own appraisal, or other documentation, for consideration as to the value of the resort area.

RESPONSE 10: The department directs all commenters to Response #6.

/s/ Todd Olson

Todd Olson  
Rule Reviewer

/s/ Gene Walborn

Gene Walborn  
Director of Revenue

Certified to the Secretary of State April 7, 2020.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 42.19.1235 pertaining to tax )  
incentive for new or expanding )  
industry )

TO: All Concerned Persons

1. On February 28, 2020, the Department of Revenue published MAR Notice No. 42-1018 pertaining to the proposed amendment of the above-stated rule at page 388 of the 2020 Montana Administrative Register, Issue Number 4.
2. The department has amended ARM 42.19.1235 as proposed.
3. No comments or testimony were received.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Gene Walborn  
Gene Walborn  
Director of Revenue

Certified to the Secretary of State April 7, 2020.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF ADOPTION OF
Temporary Emergency Rule I	)	TEMPORARY EMERGENCY RULE
pertaining to Electronic Notary	)	
Stamps	)	

TO: All Concerned Persons

1. The Secretary of State is adopting Temporary Emergency Rule I for the following reasons:

A. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 2-2020.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 14, 2020, Governor Steve Bullock extended the emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 3-2020.

D. The Secretary of State finds that under the emergency circumstances of the COVID-19 pandemic, there is an immediate peril to the public health, safety, and welfare requiring adoption of a rule upon fewer than 30 days' notice. As all Americans are being advised to practice social distancing, the circumstances of the COVID-19 pandemic may prevent in-person notarization.

E. There is a reasonable necessity to immediately adopt a temporary emergency rule pursuant to 2-4-303, MCA, to protect the public health, safety, and welfare because of the emergency conditions of the COVID-19 pandemic and to ensure the public has sufficient access to notarization in areas including, but not limited to, property, financial, and business services.

F. The Secretary of State is adopting the following emergency rule because of the sudden and unexpected need for remote online notarizations (RON) due to the COVID-19 crisis. Unprecedented demand has been placed on the approved providers of RON platforms to onboard qualified Montana notary applicants for technology-based notarial services as quickly as possible. Montana has unique requirements for the electronic notary seal/stamp that impose significant developmental time on the part of the platform providers. This will significantly delay the ability of the RON notary applicants to begin offering remote notary services to the people of Montana. RON is an excellent and appropriate way to provide legal and safe notarial services without endangering the health and safety of either the principal or the notary since the required personal appearance is achieved through communication technology as described in 1-5-602(2)(b), MCA.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State to advise us of the nature of the accommodation that you need. Please contact Austin James, telephone (406) 444-6197; fax (406) 444-3976; TDD/Montana Relay Service/etc. (406) 444-9068; or e-mail [Austin.James@mt.gov](mailto:Austin.James@mt.gov).

3. The temporary emergency rule is effective April 8, 2020.

4. The text of the temporary emergency rule provides as follows:

NEW RULE I OFFICIAL STAMP (1) An electronic image of the official stamp of a notary public authorized to perform remote or remote online notarizations may be different in size, format, content, or border design as long as it is reasonably consistent with the official notary stamp requirements of ARM 44.15.107 and the Secretary of State's office has been notified of the discrepancy.

AUTH: 1-5-628, MCA  
IMP: 1-5-616(2), MCA

5. The rationale for the temporary emergency rule is set forth in paragraph 1.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request 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 paragraph 2 above or may be made by completing a request form at any rules hearing held by the department.

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

/s/ Austin James  
Austin James  
Rule Reviewer  
Attorney

/s/ Dana Corson  
Dana Corson  
Director  
Office of Secretary of State

Dated April 8, 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 October 18, 2019, through March 27, 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.

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