

# MONTANA ADMINISTRATIVE REGISTER

2020 ISSUE NO. 19  
OCTOBER 9, 2020  
PAGES 1786-1856



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 19

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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) 444-9009.

### Page Number

## TABLE OF CONTENTS

### PROPOSAL NOTICE SECTION

#### ADMINISTRATION, Department of, Title 2

2-59-609 Notice of Proposed Amendment - Semiannual Assessment for Banks and Credit Unions. No Public Hearing Contemplated.	1786-1788
--	-----------

#### ENVIRONMENTAL QUALITY, Department of, Title 17

17-414 (Board of Environmental Review) (Water Quality) Notice to Hold a Virtual Public Hearing on Proposed Amendment and Adoption - Selenium Standards for Lake Koocanusa and the Kootenai River.	1789-1794
---	-----------

#### TRANSPORTATION, Department of, Title 18

18-183 Notice of Proposed Amendment and Repeal - Motor Fuels Tax. No Public Hearing Contemplated.	1795-1803
---	-----------

#### JUSTICE, Department of, Title 23

23-18-249 Notice of Public Hearing on Proposed Adoption and Amendment - Montana 24/7 Sobriety Program Act.	1804-1820
--	-----------

LABOR AND INDUSTRY, Department of, Title 24

24-101-309 Notice of Public Hearing on Proposed Amendment and Adoption - Definitions - Applicants With Criminal Convictions. 1821-1825

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-931 Notice of Public Hearing on Proposed Amendment - Automated External Defibrillators (AED). 1826-1831

REVENUE, Department of, Title 42

42-1024 Notice of Public Hearing on Proposed Amendment - Updates to the Montana Reappraisal Plan and Classification and Valuation Manuals. 1832-1834

RULE ADOPTION SECTION

ADMINISTRATION, Department of, Title 2

2-59-604 Notice of Amendment - Designated Manager Supervisory Requirements. 1835

2-59-606 Notice of Amendment - Renewal Fees of Mortgage Brokers, Mortgage Lenders, Mortgage Servicers, and Mortgage Loan Originators. 1836

AGRICULTURE, Department of, Title 4

4-20-268 Notice of Amendment and Adoption - Violations in Commodity Reporting. 1837

LABOR AND INDUSTRY, Department of, Title 24

24-156-89 (Board of Medical Examiners) Notice of Temporary Emergency Rule Amendment - ECP Scope of Practice. 1838-1839

24-301-348 Notice of Amendment - Underground Facility Protection Program - Assessment and Collection of Civil Penalties - Collection of Annual Fees - Disputes Regarding Penalties and Fines—Mediation - Training and Educational Grants. 1840

LIVESTOCK, Department of, Title 32

32-20-308 Notice of Adoption - Label Review. 1841-1842

LIVESTOCK, Continued

32-20-311 Notice of Amendment - Special Requirements for Poultry  
- Special Requirements for Alternative Livestock. 1843

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-929 Notice of Amendment - Low Income Energy Assistance  
Program (LIEAP). 1844

37-930 Notice of Amendment - Trauma Facility Designation. 1845

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 1846-1847

How to Use ARM and MAR. 1848

Recent Rulemaking by Agency. 1849-1856

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.59.104 and 2.59.401 pertaining	)	AMENDMENT
to semiannual assessment for banks	)	
and credit unions	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On November 21, 2020, the Department of Administration proposes to amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on October 21, 2020, 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. GENERAL STATEMENT OF REASONABLE NECESSITY: In MAR Notice No. 2-59-599, the department adopted a temporary emergency rule on April 24, 2020, waiving bank assessments and credit union supervisory fees for June 2020. By waiving the assessment and supervisory fee, it allowed institutions to use the funds as appropriate to best assist their customers during the COVID-19 crisis.

The department proposes to waive the December 2020 assessment to allow banks and credit unions to continue to assist their customers as they see fit during this health and economic crisis. In addition, waiving these fees enables the department to reduce its fund balance which will be sufficient despite the decrease in revenue. This amendment will reduce assessments the department will receive from banks from approximately \$762,554 to zero and reduce fees the department will receive from credit unions from approximately \$170,839 to zero.

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

2.59.104 SEMIANNUAL ASSESSMENT (1) through (5) remain the same.  
(6) The assessment billed in December 2020 and collected in January 2021 is waived.

AUTH: 32-1-213, 32-1-218, MCA  
IMP: 32-1-213, 32-1-218, MCA

2.59.401 CREDIT UNIONS - SUPERVISORY FEE (1) and (2) remain the same.

(3) The assessment is due 30 days after each invoice date, or July 31 and January 31, whichever is later.

(4) The assessment billed in December 2020 and collected in January 2021 is waived.

AUTH: 32-3-201, MCA

IMP: 32-3-201, MCA

STATEMENT OF REASONABLE NECESSITY: No due date for credit union supervisory fees is provided in statute or rule. The department has determined it is necessary to include a due date in rule to provide clarity to credit unions. The longtime practice of the department has been to treat banks and credit unions the same in terms of when the invoices are sent and due. Current practice is that invoices are sent in January and July and payment is requested by the end of the month or 30 days thereafter, whichever is later. This proposal reflects current practice and is intended to formally incorporate it in rule.

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [banking@mt.gov](mailto:banking@mt.gov); and must be received no later than 5:00 p.m., November 6, 2020.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 5 above no later than 5:00 p.m., October 21, 2020.

7. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 5 persons based on the 39 state-chartered banks and 10 state-chartered credit unions.

8. An electronic copy of this proposal notice is available through the department's website at <http://doa.mt.gov/administrativerules>. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website

accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

9. 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.

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

11. The department has determined that under 2-4-111, MCA, the proposed amendment of the above-stated rules will not significantly and directly impact small businesses.

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

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

Certified to the Secretary of State September 29, 2020.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE TO HOLD VIRTUAL
17.30.602 and the adoption of NEW )	PUBLIC HEARING ON
RULE I pertaining to selenium standards )	PROPOSED AMENDMENT AND
for Lake Koocanusa and the Kootenai )	ADOPTION
River )	
)	(WATER QUALITY)

TO: All Concerned Persons

1. On November 5, 2020, at 10:00 a.m., the Board of Environmental Review (board) will hold a virtual public hearing via Zoom, to consider the proposed amendment and adoption of the above-stated rules.

Due to the guidance issued by the Governor of the State of Montana on March 26, 2020, regarding the COVID-19 public health situation, the public hearing will be held virtually via the Zoom meeting platform and will be recorded. Persons wishing to attend the public hearing need to register in advance with Zoom. Registration with Zoom may be made at the following link: <https://mt.gov.zoom.us/meeting/register/tJYudO6grJrHN0MjMMCzC9gJR3is4ZkzV6d>. After registering, you will receive a confirmation email containing information about joining the hearing. Please contact Sandy Scherer at the Department of Environmental Quality at (406) 444-2630 or [sscherer@mt.gov](mailto:sscherer@mt.gov) should you encounter any difficulties.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer no later than 5:00 p.m., October 29, 2020, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [sscherer@mt.gov](mailto:sscherer@mt.gov).

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

ARM 17.30.602 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions given in 75-5-103, MCA:

(1) through (31) remain the same.

(32) "Steady state" means, for the purposes of [NEW RULE I], conditions whereby there are no activities resulting in new, increasing, or changing selenium loads to the lake or river aquatic ecosystem, and selenium concentrations in fish living in the aquatic ecosystem have stabilized.

(32) through (41) remain the same, but are renumbered (33) through (42).

AUTH: 75-5-201, 75-5-301, MCA



IMP: 75-5-301, 75-5-313, MCA

REASON: Proposed NEW RULE I contains two classes of selenium standards: fish tissue standards, which limit the amount of selenium allowed to accumulate in different tissues, and water column standards, which are derived from bioaccumulation modeling and intended to limit selenium accumulation in fish tissue. Fish tissue standards provide the most direct and accurate assessment of selenium impacts on aquatic life; but if selenium loading to a waterbody is increasing, it can take time (months, years) for the effect to be detected in the fish. This situation—in which there is a delay between increased selenium loading and increased levels of selenium in fish tissue—is referred to as non-steady state. When selenium loadings to the aquatic system are stable and fish selenium concentrations have leveled off, this is referred to as steady state. When steady state is achieved, selenium loading in the water body is reflected in selenium concentrations in fish tissue. It is necessary to adopt the proposed definition of steady state to determine which selenium standard will apply to protect the aquatic life beneficial use. During steady state, the fish tissue standards take precedence over the water column standards. When non-steady state conditions prevail, the fish tissue standards do not take precedence over the water column standards and both standards apply (see NEW RULE I(2)). The proposed definition of steady state provides conditions under which the water body will be determined to be in steady state. If steady state is not achieved, the water body is deemed to be in non-steady state.

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

NEW RULE I SELENIUM STANDARDS FOR LAKE KOOCANUSA AND THE KOOTENAI RIVER (1) For Lake Koocanusa and the Kootenai River mainstem, the standards specified in (6) and (7) supersede the otherwise applicable water quality standards found elsewhere in state law.

(2) Numeric selenium standards for Lake Koocanusa and the Kootenai River mainstem from the US-Canada international boundary to the Montana-Idaho border are expressed as both fish tissue and water column concentrations. When the aquatic ecosystem is in steady state and selenium data is available for both fish tissue and the water column, the fish tissue standards supersede the water column standard. When the aquatic ecosystem is in non-steady state, both the fish tissue and water column standards apply. The numeric selenium standards apply to the lake, to the river, or to both, as provided in this rule.

(3) As of [effective date of this rule], Lake Koocanusa and the Kootenai River aquatic ecosystems are in non-steady state. The department will reassess the status of these aquatic systems triennially and amend this rule to reflect any change.

(4) The water column standards are derived from modeling selenium bioaccumulation in fish tissue and reflect criteria that protect the aquatic life beneficial use. Permit conditions and limits developed from the water column standards comply with the fish tissue standards.

(5) No person may violate the numeric water quality standards in (6) and (7).

(6) Fish tissue standards are applicable to tissues of fish in Lake Koocanusa from the US-Canada international boundary to the Libby Dam and in the mainstem

Kootenai River from the outflow below the Libby Dam to the Montana-Idaho border. Egg/ovary tissue standards supersede any muscle or whole-body standards, as well as the water column standards in (7), when fish egg/ovary samples are available and when the aquatic ecosystem is in steady state.

Fish Tissue	Selenium Concentration
Eggs/Ovaries	15.1 mg/kg dry weight (dw)
Muscle	11.3 mg/kg dw
Whole Body	8.5 mg/kg dw

(7) Water column standards are the numeric standards for total dissolved selenium computed as a 30-day average, and shall not be exceeded more than once in three years, on average.

(a) Lake Koocanusa from the US-Canada international boundary to the Libby Dam: 0.8 µg/L.

(b) Kootenai River mainstem from the outflow below the Libby Dam to the Montana-Idaho border: 3.1 µg/L.

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: Section 75-5-301(2), MCA, grants the board the authority to adopt water quality standards under the Montana Water Quality Act. Under 75-5-203(1), MCA, the board may not adopt a standard that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. In 2016, the U.S. Environmental Protection Agency (EPA) updated the national selenium criteria guidance published pursuant to section 304(a) of the federal Clean Water Act. The guidance included a recommendation that states and tribes develop site-specific selenium standards, whenever possible, due to the local environmental factors affecting selenium bioaccumulation in aquatic ecosystems.

In 2015, the department began a coordinated effort with an international working group consisting of U.S. and Canadian stakeholders to develop site-specific selenium criteria for Lake Koocanusa. The technical work was undertaken in collaboration with the British Columbia Ministry of Environment and Climate Change Strategy (BC-ENV) and a selenium committee comprised of scientists recognized for their selenium expertise. There was significant stakeholder collaboration and input throughout the multi-year standards development process. The collaborative process also included a partnership with the U.S. Geological Survey to perform bioaccumulation selenium modeling using their peer reviewed Ecosystem-Scale Selenium Model (Presser and Luoma, 2010). The technical basis of the criteria is described in three reports (EPA, 2016; Presser and Naftz, 2020; DEQ, 2020). From this technical work there is a narrow range of protective values from which the department has identified the proposed fish tissue and water column standards that would be applicable to Lake Koocanusa and the Kootenai River.

The fish tissue standards are expressed as instantaneous measurements not to be exceeded. Fish tissue standards have a hierarchy of importance; the egg/ovary standard is the most important because it is the most indicative of selenium toxicological effects on fish at the reproductive stage. Toxicological effects of selenium at the reproductive stage include, but are not limited to, mortality, deformity, growth impairment, oxidative stress, and behavioral impairment. However, fish egg/ovary tissue selenium data is not always available. Fish muscle or whole-body tissue standards can be used in the absence of fish egg/ovary tissue.

The fish tissue standards supersede the water column standard only when the lake or river is in steady state, referring to conditions whereby there are no occurrences of new activities to the lake or river that release selenium to the aquatic ecosystem (EPA, 2016). At the time of this proposed rule adoption, Lake Koocanusa and the Kootenai mainstem river are in non-steady state (Presser and Naftz, 2020). Therefore, both the fish tissue standards and water column standards are the applicable standards for Lake Koocanusa and the Kootenai mainstem river. The department will determine when Lake Koocanusa and the Kootenai mainstem river reach steady state after review and analysis has been carried out by the department during triennial review. The proposed water column standards are chronic values. There is no acute selenium standard included since the greatest toxicity risk to aquatic life is from chronic dietary exposure.

It is necessary to adopt the proposed numeric selenium standards to incorporate the best available science for selenium toxicity and protect selenium-sensitive aquatic life in the Kootenai watershed. The proposed fish tissue and water column standards for the mainstem Kootenai River are based on current EPA 304(a) criteria for lotic (flowing) waters. The proposed fish tissue and water column standards for Lake Koocanusa are based on EPA 304(a) fish tissue criteria, and site-specific water column criteria derived following procedures set forth by EPA in the 304(a) guidance.

Montana's nondegradation rules (ARM Title 17, chapter 30, subchapter 7) classify certain discharge activities as nonsignificant if they meet specified conditions. For a toxic parameter, like selenium, the non-significance determination is a two-step process wherein the expected change in concentration is evaluated against a trigger value, which is usually a concentration threshold set well below the water quality standard. For the first part of the non-significance analysis, if the change does not exceed the trigger value, it is nonsignificant. For the second part of the analysis, if the change in water quality is expected to exceed the trigger value but the change will not exceed 15 percent of the standard, the activity is nonsignificant. Trigger values are housed in Department Circular DEQ-7 (DEQ-7) and there is currently a trigger value for selenium (0.6 µg/L). Although 0.6 µg/L is appropriate for selenium standards elsewhere in the state, it is too high to apply to the selenium standards for Lake Koocanusa set forth in NEW RULE I, where the site-specific standards for the Lake Koocanusa water column is 0.8 µg/L. To address this, the department will include a second selenium trigger value in DEQ-7 at a concentration of 0.02 µg/L. This is the method detection limit (MDL) for very sensitive selenium analysis, and

because it is an MDL, it is appropriate to use as a trigger value. A footnote will be added to the circular indicating the new trigger value applies only to NEW RULE I. The department is currently undertaking a triennial review of DEQ-7, which should be completed in 2021. The new trigger value and footnote will be incorporated into DEQ-7 as part of the current triennial review.

The proposed Lake Koocanusa water column standard (30-day chronic) is no more stringent than the recommended EPA 304(a) criteria because it was developed using federally recommended site-specific procedures; therefore, it is more accurate than the generally applicable national lentic (lake) number.

The technical reports referenced above are as follows:

DEQ (Montana Department of Environmental Quality). 2020. *Technical Support Document for the derivation of a site-specific water column standard for Lake Koocanusa, Montana*. Helena, MT: Montana Dept. of Environmental Quality.

EPA (Environmental Protection Agency). 2016. *Aquatic Life Ambient Water Quality Criterion for Selenium – Freshwater 2016*. Washington DC: United States Environmental Protection Agency.

Presser, T.S., Luoma, S.N., 2010, A methodology for Ecosystem-Scale Modeling of Selenium. *Integrated Environmental Assessment and Management*, Volume 6, Issue 4, Pages 685-710.

Presser, T.S., Naftz D.L., 2020. *Understanding and Documenting the Scientific Basis of Selenium Ecological Protection in Support of Site-Specific Guidelines Development for Lake Koocanusa, Montana, U.S.A., and British Columbia, Canada*. Open-File Report 2020-1098, Helena, MT: U.S. Geological Survey.

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 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., November 23, 2020. To be guaranteed consideration, mailed comments must be postmarked on or before that date. A copy of proposed NEW RULE I, as well as technical documents supporting the rules, may be viewed at the department's website: <https://deq.mt.gov/water/Surfacewater/standards>. Copies of any of these documents may also be obtained by contacting Lauren Sullivan at (406) 444-5226 or [Lauren.Sullivan@mt.gov](mailto:Lauren.Sullivan@mt.gov).

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil;

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

7. Sarah Clerget, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

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 board has determined that the amendment and adoption of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes  
EDWARD HAYES  
Rule Reviewer

BY: /s/ Christine Deveny  
CHRISTINE DEVENY  
Chair

Certified to the Secretary of State September 29, 2020.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 18.15.101, 18.15.102,	)	AMENDMENT AND REPEAL
18.15.119, 18.15.127, 18.15.128,	)	
18.15.401, 18.15.408, 18.15.409,	)	NO PUBLIC HEARING
18.15.602, 18.15.603, 18.15.612,	)	CONTEMPLATED
18.15.802, and 18.15.804 and the	)	
repeal of ARM 18.15.120 and	)	
18.15.604 pertaining to Motor Fuels	)	
tax	)	

TO: All Concerned Persons

1. On November 9, 2020, the Department of Transportation proposes to amend and repeal the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Transportation no later than 5:00 p.m. on October 30, 2020, to advise us of the nature of the accommodation that you need. Please contact Tracy Halubka, Department of Transportation, Fiscal Operations, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-0806; fax (406) 444-5411; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail [thalubka@mt.gov](mailto:thalubka@mt.gov).

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

18.15.101 DEFINITIONS The following definitions apply in this chapter:

(1) through (3) remain the same.

(4) "Combination" is a motor vehicle used, designed, or maintained for transportation of persons or property and has two or more axles whose gross weight exceeds ~~46,000~~ 26,000 pounds or a combination of vehicles whose combined licensed weight exceeds ~~46,000~~ 26,000 pounds.

(5) through (9) remain the same.

~~(10) "Ethanol" means anhydrous ethanol produced in Montana from Montana agricultural products, including Montana wood or wood products, or from non-Montana agricultural products when Montana products are not available.~~

(11) through (18) remain the same but are renumbered (10) through (17).

(18) "Special fuel" as defined in 15-70-401, MCA, includes diesel fuel, stove oils, heating oils, burner fuels, kerosene, or any other combination of hydrocarbon fuels used for the operation of motor vehicles, except fuels subject to the gasoline license tax or to the license tax on vehicles operated by liquefied petroleum gas or compressed natural gas.

(19) through (22) remain the same.

AUTH: 15-70-104, 15-70-115, 15-70-522, MCA

IMP: 15-70-403, 15-70-419, 15-70-426, 15-70-430, 15-70-455, 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514, 15-70-521, 15-70-522, 15-70-523, 15-70-527, MCA

REASON: The proposed amendment to (4) is necessary to make the rule consistent with the threshold weight for the definition of a combination vehicle established in 61-10-154(2)(c), MCA. The proposed amendment deleting (10) is necessary because ethanol is already defined in 15-70-401(9), MCA. The proposed amendment to (16) moves the definition of special fuel into the general definitions rule, ARM 18.15.101, for ease of use in finding definitions of terms used throughout the administrative rules.

18.15.102 WAIVER OF MOTOR FUEL PENALTIES TAX INTEREST NOT WAIVED

~~(1) The department may waive the motor fuel late file and late pay penalties for gasoline, aviation fuel and special fuel if there is "good or reasonable cause." Good or reasonable cause means any late filing and late payment of a motor fuel tax for any of the following reasons:~~

~~(a) inability to file and pay because of an act of God, a natural disaster, or emergency declared by the governor or the president of the United States;~~

~~(b) inability to file and pay because of seizure of property by a foreign government or a court of law;~~

~~(c) inability to file and pay because the distributor's assets are impounded or frozen because of bank failure;~~

~~(d) inability to file and pay because of a serious medical emergency of the taxpayer; or~~

~~(e) first time late filing offense within a three year period of timely filings.~~

~~(2) The failure to file and pay the motor fuel taxes for the foregoing reasons are the only ones that will be accepted as good or reasonable cause that result in a waiver of the statutory penalties.~~

~~(3) The department has the discretion to waive the late pay penalty on an amended or adjusted return if it is determined that the underpayment was not within the control of the distributor.~~

~~(4) The administrator may delegate the authority to waive penalties to an employee within the department.~~

~~(5) remains the same but is renumbered (1).~~

AUTH: 15-70-104, MCA

IMP: 15-70-417, MCA

REASON: The proposed rule amendment is necessary because the criteria for waiving motor fuel penalties is already established in statute at 15-70-417, MCA.

18.15.119 LIABILITY FOR USE ON GOVERNMENT MAINTAINED ROADS

(1) Special Gasoline and special fuel, as referred to in Title 15, chapter 70, MCA, must be taxed when consumed in the operation of a motor vehicle upon public roads or the rights-of-way of which are owned by the state, county, municipality, or other governmental agency regardless of who performs the maintenance thereon.

AUTH: 15-70-104, MCA

IMP: 15-70-401, MCA

REASON: The proposed rule amendment is necessary because gasoline and special fuel have the same taxation point and this amendment recognizes that gasoline and special fuels are treated equally with regards to the tax liability imposed for use upon public roads.

18.15.127 NOTIFICATION OF SEIZURE OF FUEL (1) remains the same.

(2) ~~The department shall provide the~~ Any transporter, consignor, and/or consignee ~~a blank form with which to claim~~ with a claim to interest or title to the seized fuel ~~and/or must make a written request for a hearing. Parties may use the form to claim interest or title to the fuel, and must request any desired hearing within 30 calendar days after the date of seizure. Claims received and postmarked after 30 days are automatically denied.~~

AUTH: 15-70-104, MCA

IMP: 15-70-419, MCA

REASON: The proposed rule amendment is necessary because the department will accept any written request, including an electronic submission, for a hearing without the need to complete a specific form.

18.15.128 CONDUCT OF HEARING FOR CLAIM OR TITLE TO SEIZED FUEL (1) Upon receipt of a timely filed claim or request for hearing, the department shall schedule a hearing at department headquarters in Helena, Montana, or to be held by telephone, within five working days of the receipt of the claim or request. All proper parties shall be notified of the hearing date in writing, ~~by certified mail,~~ within two working days of the hearing date.

(2) and (3) remain the same.

AUTH: 15-70-104, MCA

IMP: 15-70-419, MCA

REASON: The proposed rule amendment is necessary to allow the department to provide for electronic written notice of hearings.

18.15.401 SELLER'S INVOICE (1) Any person, who sells and delivers gasoline or special fuel to a purchaser on which a refund may be claimed, must issue an ~~original~~ invoice at the time of delivery. Only one ~~original~~ invoice may be issued for each delivery. If all information is not provided on the ~~original~~ invoice at the time of delivery, the applicant may provide a copy of the corresponding billing



statement with the original invoice that supports the missing information. Each invoice and accompanying billing statement collectively must contain or show the following:

(a) through (2) remain the same.

AUTH: 15-70-104, MCA

IMP: 15-70-411, 15-70-412, 15-70-426, MCA

REASON: The proposed amendment is necessary to allow for the submission of electronic invoices. The proposed amendment will therefore delete the requirement that applicants must submit "original" paper invoices.

18.15.408 REFUND PERCENTAGES FOR PTO OR AUXILIARY ENGINES

~~(1) A person who purchases and uses any gasoline or special fuel on which the Montana gasoline or special fuel tax has been paid for the operation of a power take off unit (PTO), or auxiliary engines fueled from the same supply tank as the vehicle, may obtain a refund of the fuel tax. The applicant must maintain the following records:~~

~~(a) The original sales receipts and bulk fuel invoices must have a preprinted number, the seller's name and address, date, number of gallons, type of fuel, price per gallon, the purchaser's name and address, and one of the following:~~

~~(i) dollar amount of tax;~~

~~(ii) rate of tax;~~

~~(iii) a notation that Montana tax is included in the price;~~

~~(b) If bulk fuel is used, the customer must keep dispersal records that indicate the date of disbursement, number of gallons withdrawn and the vehicle in which the fuel was delivered. An original invoice for bulk storage must be submitted with the refund application.~~

~~(c) Each user shall maintain mileage records to support the mileage reported traveled, both on public roads and off public roads.~~

(2) remains the same but is renumbered (1).

AUTH: 15-70-104, MCA

IMP: 15-70-426, MCA

REASON: The proposed amendment is necessary to eliminate unnecessary language that is a duplication of 15-70-426, MCA.

18.15.409 LOST OR DESTROYED GASOLINE, SPECIAL FUEL, OR AVIATION FUEL (1) remains the same.

(a) The claim for refund must accompany the original invoice covering the purchase of gasoline, special fuel, or aviation fuel.

(b) through (2) remain the same.

AUTH: 15-70-104, 75-11-319, MCA

IMP: 15-70-425, 15-70-426, 15-70-432, 15-70-434, MCA

REASON: The proposed amendment is necessary to allow for the submission of electronic invoices by deleting the requirement that applicants must submit "original" paper invoices.

18.15.602 QUARTERLY REPORTS - TAX PAYMENT-REVOCATION

(1) Every special fuel user licensed under the International Fuel Tax Agreement (IFTA) pursuant to 15-70-121, MCA, must file with the department, on forms prescribed by the department, a report showing the amount of fuel used during the calendar quarter. Calendar quarters end on the last day of March, June, September, and December. The reports and applicable tax payments are due on or before the last day of the month following the close of a calendar quarter. ~~Reports must accompany a payment to the department for the total amount due.~~

(2) Every special fuel user licensed under IFTA, must submit the quarterly tax report regardless of the fuel usage. Failure to file the quarterly tax report or to pay the applicable tax due in the time prescribed in the IFTA Agreement is considered (1) is sufficient cause for revocation of the IFTA license. The department shall revoke the IFTA license if the required tax report or tax payment is not submitted to the department within 60 calendar days of the due date. ~~An IFTA license revoked in error will be reinstated.~~

(3) The department may revoke or deny the renewal of an IFTA license for a period of one year when it determines the licensee has failed to file a tax return or pay the tax due according to the due dates established in (1), more than three times within a three year period. A late filing and payment for the same quarterly filing period constitutes one non-compliance event.

(4) An IFTA license revoked in error will be reinstated.

AUTH: 15-70-104, MCA

IMP: 15-70-121, MCA

REASON: The proposed amendment is necessary to clarify the events and time period of a revocation of the IFTA license, as well as the department's criteria for IFTA license revocation. The proposed amendment will provide IFTA licensees information on potential noncompliance events and the potential penalty which may be imposed.

18.15.603 IFTA LICENSE BOND REQUIREMENT (1) The department may require IFTA licensees, or others as determined by the department, who fail to timely file a fuel tax return(s) and or timely pay fuel tax liability must to post a bond equivalent to twice the licensee's estimated quarterly tax liability, but not less than \$500. The bond may be a surety, a certificate of deposit, or cash.

(2) A The department may require a licensee must to post a bond for non-compliance events including:

(a) three late quarterly filings in a three-year period; or

(b) non-payment or late payment of the tax liability of an IFTA quarterly tax return two or more times in a four-quarter period; ~~or,~~

~~(c) the license was previously revoked and the licensee has requested reinstatement of the license.~~

(3) ~~The bond dollar amount is increased by \$500 for each additional non-compliance infraction. A new bond may be required for each non-compliance infraction.~~

(4) The bond requirement will be ~~is~~ removed and the bond released after three years if the licensee has timely complied with all applicable statutes and rules for those three years.

(5) remains the same.

(6) Failure to post a required bond within 44 30 days of issuance of an IFTA bond requirement notice may result in revocation of the IFTA license.

AUTH: 15-70-104, MCA

IMP: 15-70-121, MCA

REASON: The proposed amendment is necessary to clarify the department's ability to require a bond from an IFTA licensee in appropriate circumstances as determined by the non-filing or nonpayment situation. The proposed amendment will also increase the time for a licensee to post the bond from 14 to 30 days to allow sufficient time before IFTA license revocation may occur.

18.15.612 FAILURE TO MAINTAIN RECORDS ~~(1) Failure of a special fuel user licensed under IFTA to retain records as specified in the IFTA Agreement shall constitute reasonable cause for revocation of the IFTA License. Records must include special fuel purchase invoices, bills of lading, and trip records.~~

~~(2) If a special fuel user, licensed under IFTA, fails to retain the required records, the department shall estimate the miles traveled, special fuel purchases, and average miles per gallon to determine the special fuel permit holder's tax liability. The estimates are based on records for a portion of the operations of the special fuel user's vehicles consuming special fuels or other available information indicating fuel usage by the vehicles for which reports are being made. Where the records are not adequate to verify the average miles per gallon (ampg) reported, and the average cannot be estimated, an ampg specified in (4) will be used.~~

~~(3) If, within 30 days of the date the department issues an assessment based on the ampg, the special fuel user licensed under IFTA provides the department with adequate records to verify or estimate special fuel usage for the user's vehicles, the department may review the records and adjust the assessment.~~

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

AUTH: 15-70-104, MCA

IMP: 15-70-121, 15-70-403, MCA

REASON: The proposed rule amendment is necessary to remove duplicate language established by the IFTA Agreement itself, as the Agreement's record keeping requirements are already applicable to all IFTA licensees. The proposed amendment will retain special fuel user's record retention requirements outside the IFTA Agreement in the remaining sections.

18.15.802 QUARTERLY TAX RETURNS ~~(1) Every CNG or LPG dealer~~

~~must file a tax return with the department on or before the last day of the month following the close of the calendar quarter to which it relates on forms supplied by the department. The CNG return must account for all fuel received, sold, distributed, and used, and must include the amount of fuel tax collected during the calendar quarter, together with any other information the department may require. The LPG tax return must account for the total taxable gallons of fuel sold, the amount of fuel tax collected during the calendar quarter, together with any other information the department may require. The tax returns must accompany a tax remittance, if any, payable to the Department of Transportation for the amount of tax due.~~

~~(2) through (4) remain the same but are renumbered (1) through (3).~~

AUTH: 15-70-104, MCA

IMP: 15-70-706, 15-70-713, 15-70-714, MCA

REASON: The proposed amendment is necessary to eliminate unnecessary language that is a duplication of 15-70-714, MCA.

18.15.804 DEALER INVOICES (1) ~~An original invoice must be issued at the time of each fuel disbursement into the supply tank of a motor vehicle. Each invoice must include a consecutive number, the date of sale, and total number of gallons sold.~~

~~(2) A cardtroll and keylock statement with the date of sale and total number of gallons sold will be accepted as an original invoice.~~

AUTH: 15-70-104, MCA

IMP: 15-70-712, 15-70-713, MCA

REASON: The proposed amendment is necessary to allow for the submission of electronic invoices by deleting the requirement that applicants must submit "original" paper invoices. The proposed amendment will also delete reference to cardtroll and keylock statements because cardtroll and keylock are not available as methods of purchase for CNG or LPG, and this rule only applies to those alternative fuels as part of Subchapter 8, Alternative Fuels.

4. The following rules are proposed to be repealed:

18.15.120 WHAT CONSTITUTES SPECIAL FUEL

AUTH: 15-70-104, MCA

IMP: 15-70-401, MCA

REASON: The repeal of ARM 18.15.120 is necessary because the definition of "special fuel" is proposed to be moved to ARM 18.15.101, for ease of use in finding definitions of terms used throughout the administrative rules.

18.15.604 IFTA REINSTATEMENT FEE

AUTH: 15-70-104, MCA

IMP: 15-70-121, MCA

REASON: The repeal of ARM 18.15.604 is necessary because the IFTA reinstatement fee of \$100 is not an effective deterrence and is not cost-effective for the department to collect.

The department estimates the proposed repeal of the reinstatement fee will decrease the department's revenue in the cumulative amount of approximately \$3,000 based on a FY 2019 collection amount of \$3,600 and a FY 2020 collection amount of \$2,300. The proposed repeal of the reinstatement fee will affect 1,536 license holders.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Tracy Halubka, Department of Transportation, Fiscal Operations, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-0806; fax (406) 444-5411; TTY Service (800) 335-7592 or the Montana Relay Service at 711; or e-mail [thalubka@mt.gov](mailto:thalubka@mt.gov), and must be received no later than 5:00 p.m., November 6, 2020.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Tracy Halubka at the above address no later than 5:00 p.m., November 6, 2020.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 763 persons based on 7,638 active USDOT accounts based in Montana.

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

9. An electronic copy of this proposal notice is available on the Department of Transportation website at [www.mdt.mt.gov](http://www.mdt.mt.gov).

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

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

12. With regard to the requirements of 2-15-142, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not have direct tribal implications.

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

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

Certified to the Secretary of State September 29, 2020.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through VII and the	)	PROPOSED ADOPTION AND
amendment of ARM 23.3.231,	)	AMENDMENT
23.18.301, 23.18.302, 23.18.303,	)	
23.18.304, 23.18.305, 23.18.306,	)	
23.18.308, and 23.18.309 pertaining	)	
to the Montana 24/7 Sobriety	)	
Program Act	)	

TO: All Concerned Persons

1. On November 5, 2020, at 10:00 a.m., the Department of Justice will hold a public hearing in the auditorium of the Department of Public Health and Human Services building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on October 26, 2020, to advise us of the nature of the accommodation that you need. Please contact Jay Porteen, Department of Justice, 215 N. Sanders, P.O. Box 201401, Helena, MT 59601; (406) 437-4779 or email at Jay.Porteen@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2019 Legislature enacted Chapter 374, Laws of 2019 (Senate Bill 362), an act revising the requirements for the 24/7 Sobriety and Drug Monitoring Program Act. The Montana Highway Patrol, Department of Justice (department), is enacting new rules and amending certain rules to update processes and correct terminology in compliance with the statutory changes and to further implement the legislation.

As part of the periodic review of its administrative rules, the department is proposing further additions and revisions throughout the rules. The existing landscape for alcohol and drug testing in Montana does not conform to the current administrative rule structure. Since 2011, when the rules were first enacted, available testing technology has advanced and multiplied. The program itself has grown to include over 10,000 participants and is now spearheaded by a program director. Accordingly, the department has determined that reasonable necessity exists to propose and amend certain rules to address the new technology and practices. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I APPROVED TESTING METHODOLOGIES, INSTRUMENTS, AND VENDORS (1) The department shall maintain a list of approved testing methodologies, instruments, and vendors for the 24/7 sobriety program. Only approved methodologies, instruments, and vendors may be used.

(2) To be approved:

(a) the testing methodology and instrument must conform to the requirements of [NEW RULE II through NEW RULE IV]; and

(b) the participating vendor must have a current vendor agreement.

(3) The department shall publish the list on the department's website. The department shall distribute copies of the list to the participating agencies, judges, and any other entity using the 24/7 program.

(4) The department shall remove a methodology, instrument, or vendor from the list if:

(a) the instrument or vendor fails to comply with any requirement in (2) after notification and an opportunity to remedy the failure; or

(b) the methodology or instrument is no longer supported by evidence of effectiveness.

(5) The department shall notify all participating law enforcement agencies, judges, and participating entities when removing a methodology, instrument, or vendor from the list.

(6) The sheriff shall ensure that the individuals administering all 24/7 program testing methodologies and instruments are properly trained.

AUTH: 44-4-1204, MCA

IMP: 44-4-1203, 44-4-1204, MCA

REASON: Several vendors have contacted the department asking how to join the 24/7 sobriety program in Montana. This rule is necessary to set out a transparent approval (and removal) process for testing methodologies, instruments, and vendors. This rule is also reasonably necessary because a published list will clarify for participating law enforcement agencies, judges, prospective vendors, and any other participating entities which testing methodologies, instruments, and vendors are approved by the department for purposes of 44-4-1203, MCA.

NEW RULE II PRELIMINARY ALCOHOL SCREENING TEST (PAST) DEVICES (1) The department shall approve a PAST device for use in the 24/7 sobriety program if the device:

(a) appears on the list of approved PAST devices maintained by the Forensic Science Division; and

(b) is field certified pursuant to ARM 23.4.213.

(2) The department shall include a device approved pursuant to (1) on its list of approved testing methodologies, instruments, and vendors.

(3) The following definitions apply to a twice-daily PAST testing regimen:

(a) "Confirmation test" or "confirmatory test" is the final breath alcohol test used to determine if a participant violated the requirements of the program.

(b) "Confirmed no show" means a pending no show that is unexcused and confirmed. A confirmed no show is a non-compliant event.



(c) "Deprivation period" means the time required between a non-negative initial test and a confirmatory test. During a deprivation period, the participant is instructed to remove any non-fixed foreign material from their mouth and to not place any new foreign matter into their mouth.

(d) "Excused no show" means a pending no show that is excused by the participant's supervisor. An excused no show is not a non-compliant event.

(e) "Initial test" is a first test that screens out compliant participants. Participants with a non-negative initial test are subject to a confirmatory test.

(f) "Negative for the presence of alcohol" means the PAST initial or confirmatory test results are less than 0.006 G/210L, where G means the weight of alcohol in grams and L means the volume of breath in liters.

(g) "Non-negative test result" means the PAST initial test results are greater than or equal to 0.006 G/210L, where G means the weight of alcohol in grams and L means the volume of breath in liters. Non-negative test results are compliant test results.

(h) "Pending no show" means a scheduled test for which a participant did not appear or did not provide a sample for analysis, but the no show is not yet confirmed or excused by the participant's supervisor.

(i) "Positive for the presence of alcohol" means the initial and confirmatory test results are 0.006 G/210L or greater, where G means the weight of alcohol in grams and L means the volume of breath in liters.

(j) "Refusal to test" means a participant is unwilling to provide a confirmatory test after an initial test. This is a non-compliant event.

(4) All testing data from a PAST device must be entered into the data management system.

AUTH: 44-4-1204, MCA

IMP: 44-4-1203, 44-4-1204, MCA

REASON: NEW RULES II through VI are reasonably necessary to resolve confusion and uncertainty as to the testing methodologies and instruments approved for use in the statewide 24/7 sobriety program. Each rule provides definitions applicable to its type of testing methodology. The definitions for a positive test and a negative test vary based upon the instrument type, whether it is testing breath, blood, urine, sweat, or saliva and whether it is testing for alcohol use, drug use, or both. The rules specify the data elements to be entered, downloaded, or transferred into the data management system for each test method and instrument. Each rule also specifies when test results must be entered, downloaded, or transferred into the data management system. If a particular testing method has a variable unique to that testing method, the rule addresses it. If applicable, the rule lists any required nationally recognized certifications for the appropriate testing method or instrument. Collectively, these rules are reasonably necessary to ensure that all participating jurisdictions are using approved testing methodologies consistently.

Currently, program data is not consistently gathered or transmitted to the State. The rules are necessary to ensure that the data collected from the various testing methods is consistent so the department can analyze the effectiveness of the

program and each testing method with reliable, uniform data. Accurate, comprehensive, and searchable data located in a single database is critical for making informed public policy decisions related to the program and to the public safety implications of drug and alcohol testing requirements in general.

The proposed New Rule II also addresses significant confusion regarding PAST devices and the amount of alcohol necessary to constitute a violation of the 24/7 sobriety program. That confusion appears to stem from ARM 23.4.225, which states that a PAST result of 0.020 G/210L or greater is considered positive for the presence of alcohol. PAST devices currently are tested for accuracy to 0.020 G/210L, as that standard encompasses the Blood Alcohol Content offenses under Montana law. Unlike offenses involving a specific, quantifiable measurement of alcohol, such as the offenses set forth in 61-8-406, 61-8-410, and 61-8-465, MCA, the 24/7 sobriety program tests for *any* presence of alcohol; thus, PAST results have a different significance when obtained as part of a 24/7 sobriety program. Because authorized PAST devices have a margin of error of +/- 0.0050 G/210L, this rule clarifies that any result of 0.0060 G/210L or greater is considered a violation of the requirements of the 24/7 sobriety program.

NEW RULE III TRANSDERMAL TESTING (1) Only transdermal alcohol monitoring devices and vendors on the department's list of approved testing methodologies, instruments, and vendors may be used in the 24/7 program.

(2) The following definitions apply to a transdermal testing regimen:

(a) "Confirmed positive transdermal result" means the transdermal instrument reports a "confirmed positive" based on the participant's alcohol use.

(b) "Confirmed tamper" means an instance where a participant attempts to foil the testing process or alter the test result, with or without success.

(c) "Positive for the use of alcohol" or "confirmed positive" means the transdermal system reports and confirms a participant's alcohol use.

(3) Transdermal alcohol monitoring devices must transmit stored test data to the transdermal alcohol monitoring system for interpretation and storage at least once a week.

(4) At least once a day, the transdermal alcohol monitoring system must transmit collected enrollment and test data into the data management system through a department-approved interface. The uploaded data shall include recently collected data with a date stamp for the day it was collected and a date stamp for the day that the results were generated. If all of the tests for a day are collected, but not confirmed, a message indicating that the data for that day is "in process" should be transmitted to the data management system. No data or message should be transmitted for a day where data has yet to be collected from the testing device. Once confirmed data has been successfully uploaded to the data management system, it should not be uploaded again unless the data management system requests it.

(5) Required data includes the following:

(a) enrollment data as outlined in ARM 23.18.303(4);

(b) the instrument's identification;

(c) the name of the instrument/bracelet owner;

- (d) the program start and end dates;
  - (e) the device attachment date;
  - (f) the data transfer type;
  - (g) the days monitored;
  - (h) the number of analyses performed daily;
  - (i) any confirmed test results with the time, date, and if the test result is positive, the transdermal alcohol concentration;
  - (j) the device removal date;
  - (k) the removed instrument's identification;
  - (l) the reason for the device's removal;
  - (m) the reason for the participant's program termination; and
  - (n) the date and time of the participant's program termination.
- (6) Transdermal alcohol monitoring devices must sample a person's perspiration at least once every 30 minutes.

AUTH: 44-4-1204, MCA

IMP: 44-4-1203, 44-4-1204, MCA

NEW RULE IV REMOTE BREATH TESTING (1) Only remote breath testing devices and vendors on the department's list of approved testing methodologies, instruments, and vendors may be used in the program.

(2) The following definitions apply to a remote breath testing regimen:

(a) "Confirmation test" or "confirmatory test" is the final breath alcohol test used to determine if a participant violated the requirements of the program.

(b) "Confirmed no show" means a pending no show that is unexcused and confirmed. A confirmed no show is a non-compliant event.

(c) "Confirmed tamper" means an instance where a participant attempts to foil the testing process or alter the test result, with or without success.

(d) "Deprivation period" means the time required between a non-negative initial test and a confirmatory test. During a deprivation period, the participant is instructed to remove any non-fixed foreign material from their mouth and to not place any new foreign matter into their mouth.

(e) "Excused no show" means a pending no show that is excused by the participant's supervisor. An excused no show is not a non-compliant event.

(f) "Initial test" is a first test that screens out compliant participants. Participants with a non-negative initial test are subject to a confirmatory breath alcohol test.

(g) "Negative for the presence of alcohol" means the initial or confirmatory test results are less than 0.020 G/210L, where G means the weight of alcohol in grams and L means the volume of breath in liters.

(h) "Non-negative test result" means the initial test results are greater than or equal to 0.020 G/210L, where G means the weight of alcohol in grams and L means the volume of breath in liters. Non-negative tests are compliant tests.

(i) "Pending no show" means a scheduled test for which a participant did not appear or did not provide an initial sample for analysis, but the no show is not yet resolved by the participant's supervisor.

(j) "Positive for the presence of alcohol" means the initial and confirmatory test results where both results are 0.020 G/210L or greater, where G means the weight of alcohol in grams and L means the volume of breath in liters.

(k) "Refusal to test" means a participant's unwillingness to provide a confirmatory test after an initial test. This is a non-compliant event.

(3) At least once a day, remote breath alcohol monitoring devices must transmit stored test data to the remote breath alcohol monitoring system for interpretation and storage.

(4) At least once a day, a remote breath alcohol monitoring system must transmit collected enrollment and test data into the data management system through a department-approved interface. The uploaded data shall include recently collected data with a date stamp for the day the data was collected and the day the results were generated. If all of the tests for a day have been collected, but not confirmed, a message indicating that the data for that day are "in process" should be transmitted. No data or message should be transmitted for a day where data has yet to be collected from the testing device. Once confirmed data has been successfully uploaded to the data management system, it should not be uploaded again unless the data system requests it.

(5) Required data includes the following:

- (a) enrollment data as outlined in ARM 23.18.303(4);
- (b) the instrument's identification;
- (c) the name of the instrument owner;
- (d) the program start and end dates;
- (e) the instrument acceptance date;
- (f) the data transfer type;
- (g) the days monitored;
- (h) the number of analyses performed daily;
- (i) any confirmed test results, including a refusal to provide a confirmation test, a confirmed no show, or an excused no show, with the time, date, and if the test result is positive, the alcohol concentration;
- (j) the instrument return date;
- (k) the returned instrument's identification;
- (l) the reason for the instrument's return;
- (m) the reason for the participant's program termination; and
- (n) the date and time of the participant's program termination.

(6) Remote breath alcohol testing devices must conduct between three and six tests per day, with two of the tests twelve hours apart.

AUTH: 44-4-1204, MCA

IMP: 44-4-1203, 44-4-1204, MCA

NEW RULE V DRUG PATCH USAGE (1) Only drug patches and vendors on the department's list of approved testing methodologies, instruments, and vendors may be used in the program.

(2) A drug patch shall be used and transmitted to the laboratory for analysis in accordance with manufacturer specifications.

(3) The individual removing the drug patch shall collect specimens using a container from an approved vendor and send the container to the laboratory for testing.

(4) For each specimen, the individual administering the drug patch shall complete a test-requisition and chain of custody form in accordance with industry standards.

(5) Required data from drug patch testing must be promptly entered into the data management system. The required data includes:

- (a) enrollment data as outlined in ARM 23.18.303(4);
- (b) the program start date;
- (c) the program end date;
- (d) the drug patch attachment date;
- (e) the drug patch identification;
- (f) the test status and result;
- (g) the reason for the participant's program termination; and
- (h) the date and time of the participant's program termination.

AUTH: 44-4-1204, MCA

IMP: 44-4-1203, 44-4-1204, MCA

NEW RULE VI SALIVA AND URINALYSIS TESTING (1) Only saliva and urinalysis testing instruments and vendors on the department's list of approved testing methodologies, instruments, and vendors may be used in the program.

(2) For purposes of this rule, the following definitions apply:

(a) "Confirmatory test" means the final drug test used to determine if a participant has violated the requirements of the program. If the participant does not admit use and chooses to perform a laboratory confirmation test, the laboratory confirmation test is considered a confirmatory test and the on-site analysis is considered an initial test. If the participant chooses not to run a laboratory confirmation test, the on-site test is considered the confirmatory test.

(b) "Initial test" means a first test that screens out compliant participants. If the initial test is non-negative, the participant is subject to a confirmatory test in urinalysis and oral swab testing unless the participant admits use.

(c) "Laboratory" means:

(i) a facility that receives and tests saliva and urine specimens to determine the presence of drugs; and

(ii) a facility with at least one of the following certifications or accreditations: Clinical Laboratory Improvement Amendment (CLIA); American Association for Laboratory Accreditation; American Osteopathic Association/Healthcare Facilities Accreditation Program (AOA/HFAP); College of American Pathologists (COLA); ANSI National Accreditation Board (ANAB); or The Joint Commission.

(d) "Non-negative test result" means a test result on an initial test that is greater than the cutoff level for a psychoactive substance or metabolite but is not confirmed as a positive test.

(e) "Positive test result" means a test result confirming the presence of a psychoactive substance or metabolite in a sample provided by a participant.

(3) The individual administering the saliva or urinalysis test shall collect specimens using a container from an approved vendor and send the container to a laboratory for testing if the testing protocol requires laboratory review. For each specimen requiring laboratory review, the individual administering the test shall complete a test-requisition and/or chain of custody form in accordance with industry standards.

(4) Required data from saliva and urinalysis testing must be promptly entered into the data management system. Required data includes:

- (a) enrollment data as outlined in ARM 23.18.303(4);
- (b) the program start date;
- (c) the program end date;
- (d) the reason for a participant's program enrollment;
- (e) the name of the individual administering the test;
- (f) the primary test site;
- (g) the type of test; the oral fluid or urinalysis kit identification number;
- (h) for a laboratory sample, the chain of custody number;
- (i) the test status and result;
- (j) the reason for the participant's program termination; and
- (k) the date and time of the participant's program termination.

AUTH: 44-4-1204, MCA

IMP: 44-4-1203, 44-4-1204, MCA

#### NEW RULE VII VIOLATIONS—NONCOMPLIANT EVENTS (1) A

participant fails to comply with the requirements of the 24/7 sobriety program if the participant:

- (a) fails to enroll in the 24/7 sobriety program;
- (b) is unwilling to pay the associated testing or participation fees;
- (c) admits use of alcohol or a dangerous drug;
- (d) fails to provide a proper test sample;
- (e) violates a condition of program participation; or
- (f) is otherwise determined to be noncompliant by a program administrator or judge.

(2) In addition to the noncompliant events in (1), a participant who is ordered to submit to twice-daily breath tests on a PAST fails to comply with the requirements of the 24/7 sobriety program if the participant:

- (a) fails to report to the testing location during the scheduled testing times;
- (b) reports to the testing site but refuses or is unable to provide an initial sample or a confirmatory sample for analysis; or
- (c) provides a confirmatory test that is positive for the presence of alcohol greater than or equal to 0.006 G/210L of breath for PAST devices.

(3) In addition to the noncompliant events in (1), a participant who is ordered to submit to transdermal alcohol monitoring fails to comply with the requirements of the 24/7 sobriety program if:

- (a) the transdermal alcohol monitoring system reports a confirmed positive transdermal result; or
- (b) the transdermal alcohol monitoring system reports a confirmed tamper.

(4) In addition to the noncompliant events in (1), a participant who is ordered to submit to remote breath alcohol monitoring fails to comply with the requirements of the 24/7 sobriety program if:

(a) the remote breath alcohol monitoring system reports a confirmed positive result;

(b) the remote breath alcohol monitoring system reports a confirmed tamper; or

(c) the participant fails to provide a breath sample within thirty minutes of a scheduled test time.

(5) In addition to the noncompliant events in (1), a participant who is ordered to submit to drug patch testing fails to comply with the requirements of the 24/7 sobriety program if the participant:

(a) fails to appear for a scheduled patch installation or removal;

(b) receives a positive test result after laboratory analysis of the patch; or

(c) tampers with the patch.

(6) In addition to the noncompliant events in (1), a participant who is ordered to submit to urinalysis testing or saliva testing fails to comply with the requirements of the 24/7 sobriety program if the participant:

(a) fails to report to the testing location at a scheduled testing time;

(b) reports to the testing site but refuses or is unable to provide an initial sample or a confirmatory sample for analysis;

(c) fails a screening test and refuses a confirmatory test;

(d) fails a confirmatory test;

(e) admits use of a prohibited substance; or

(f) adulterates or otherwise tampers with a sample.

AUTH: 44-4-1204, MCA

IMP: 44-4-1203, 44-4-1204, MCA

REASON: This rule is reasonably necessary to establish uniform standards for what constitutes a failure to comply with the requirements of the 24/7 sobriety program. It has been brought to the department's attention that participants, participating agencies, and courts have inconsistent interpretations and practices as to what constitutes a violation of the 24/7 program, especially when preliminary alcohol screening test (PAST) devices are used. The confusion regarding PAST devices appears to stem from ARM 23.4.225, which states that a PAST result of 0.020 G/210L or greater is considered positive for the presence of alcohol. PAST devices currently are tested for accuracy to 0.020 G/210L, as that standard encompasses the Blood Alcohol Content offenses under Montana law. Unlike offenses involving a specific, quantifiable measurement of alcohol, such as the offenses set forth in 61-8-406, 61-8-410, and 61-8-465, MCA, the 24/7 sobriety program tests for *any* presence of alcohol; thus, PAST results have a different significance when obtained as part of a 24/7 sobriety program. Because authorized PAST devices have a margin of error of +/- 0.0050 G/210L, this rule clarifies that any result of 0.0060 G/210L or greater is considered a violation of the requirements of the 24/7 sobriety program.

Because this issue recently arose regarding twice-daily testing on a PAST device, it will likely arise as other testing methodologies are introduced into the 24/7 sobriety program. To prevent confusion, this rule lists general 24/7 sobriety program violations, as well as violations for each type of testing method/device currently authorized under the 24/7 program.

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

23.3.231 PROBATIONARY LICENSES (1) The division may issue a persona restricted probationary license to any person whose driver's license or privilege to drive in Montana is subject to suspension or revocation when: ~~in lieu of suspension of driving privilege for six months upon conviction or forfeiture of bail or collateral not vacated for the offense of driving or being in control of a motor vehicle while under the influence of alcohol or drugs for the first time in five years as detailed in section 61-5-208, MCA if:~~

(a) ~~the judge of the court in which the conviction or forfeiture occurred recommends probation; and~~ the licensee is eligible for the Driver Rehabilitation Program under ARM 23.3.203 through 23.3.205 and the licensee enrolls and continues to participate in the Driver Rehabilitation Program; or

(b) ~~the licensee continues to comply with the alcohol treatment program or driver improvement school participation directed by the court~~ the division is otherwise authorized by statute to do so.

(2) ~~When~~ The division may issue a restricted probationary license in lieu of suspension or revocation to any person, not covered in subsection (1), whose license or permission to operate a motor vehicle in Montana is subject to suspension or revocation if: receives notification of a conviction for a second or subsequent driving under the influence of alcohol or drugs and a court's recommendation for a probationary license based on participation in an alcohol or drug testing program and the driver is otherwise eligible for a probationary license, the Division may issue a probationary license only when the alcohol or drug testing program meets the requirements of 44-4-1203(6), MCA.

(a) ~~the licensee is eligible for the Driver Rehabilitation Program under ARM 23.3.203 through 23.3.205, and~~

(b) ~~the licensee enrolls and continues to participate in the Driver Rehabilitation Program.~~

(3) ~~If a probationary licensee fails to continue to comply with the requirements for issuance of his or her probationary license or the restrictions thereon, the Division shall require the return of the person's probationary license and shall reinstate the full term of the originally authorized suspension or revocation.~~

(4) ~~If a probationary licensee is convicted of or forfeits bail or collateral on any traffic violation during the period of suspension or revocation, the Division shall require the return of the person's probationary license and shall reinstate the full term of the originally authorized suspension or revocation.~~

AUTH: 61-2-302(4), 61-14-201, MCA



IMP: 44-4-1203, 44-4-1205, 61-2-302, 61-5-206(2), 61-5-208, 61-5-231, 61-8-442, MCA.

REASON: The department's rule regarding the issuance of restricted probationary licenses in the context of convictions for driving while under the influence of alcohol or drugs has not been amended since 1985. The rule amendment is reasonably necessary to remove the outdated statutory language contained in (1) and to reflect that there is now more than one circumstance where the issuance of a probationary license may be authorized by statute. The rule amendment in (2) is also necessary to harmonize the requirements for a probationary license with the Legislature's requirement that all drug and alcohol testing ordered by a court must utilize the data management technology plan provided for in 44-4-1203(6) and 44-4-1204, MCA. Finally, the removal of (3) and (4) is necessary to reflect that the division no longer takes the actions described in those sections.

23.18.301 DEFINITIONS Unless the context indicates otherwise, the words and phrases in this subchapter have the definitions set forth in this rule.

(1) and (2) remain the same, but are renumbered (3) and (4).

(5) "Drug patch" means an adhesive patch affixed to the skin for a set number of days that uses sweat to detect the parent drug and drug metabolite.

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

~~(6)(9)~~ "Preliminary alcohol screening test device" or "PAST" means a device designed to detect and verify the presence of alcohol or provide an estimated value of alcohol concentration listed on the Forensic Science Division's list for approved PAST devices.

(7) remains the same but is renumbered (10)

~~(8)(1)~~ "24/7 sobriety program" or "program" means the program established in 2011 Mont. Laws, ch. 318, § 3 44-4-1203, MCA. The program is a continuous sobriety program in which a participant submits to testing of breath or other bodily substances to determine whether alcohol or drugs are present in the participant's body.

~~(9)(2)~~ "Continuous remote transdermal alcohol monitoring device" means a device that is capable of remote continuous or transdermal alcohol monitoring that can be attached directly to the participant an instrument that is securely located in close proximity to the wearer's skin and is capable of remotely sampling the wearer's sweat for the presence of transdermal alcohol concentration or TAC. The term includes any associated equipment necessary for the device to perform properly.

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

(11) "Remote breath test device" means a mobile breath alcohol testing device capable of scheduling tests at least three to six times a day and detecting and verifying the presence and level of alcohol in a testing participant's body. The term also includes ignition interlock devices.

(12) "Saliva testing" means testing that analyzes a saliva sample for parent drugs and metabolites.

(13) "Urinalysis" means the testing of urine by physical, chemical, and microscopical means to test for the presence of alcohol, drugs, or other substances.

AUTH: 44-4-1204, MCA  
IMP: 44-4-1204, MCA

REASON: This rule amendment is reasonably necessary to provide updated and/or new definitions for testing methodologies previously recognized in 44-4-1202, MCA (in-person breath, urine, saliva, and perspiration), and the remote breath testing methodology added to the statute by Chapter 374, Laws of 2019 (Senate Bill 362). It is unclear whether all participating agencies have been using PAST devices on the Forensic Science Division's approved device list, so this rule amendment is reasonably necessary to clarify that only devices on the approved list can be used for the primary twice-daily breath testing methodology.

The rule amendment to the definition of the 24/7 program is reasonably necessary to reflect that Chapter 318, § 3, Laws of 2011, was codified at 44-4-1203, MCA.

23.18.302 PLACEMENT IN THE 24/7 SOBRIETY PROGRAM (1) and (2) remain the same.

(3) A participant shall report for twice-daily breath tests or, in cases of hardship, submit to ~~testing through a continuous remote transdermal alcohol monitoring device~~ a hardship testing methodology for the length of time ordered by the court, the Board of Pardons and Parole, the Department of Corrections, or a parole officer.

(4) remains the same.

AUTH: 44-4-1204, MCA  
IMP: 44-4-1203, 44-4-1204, 44-4-1205, MCA

REASON: This rule amendment is reasonably necessary to reflect that remote transdermal monitoring is no longer the only hardship testing methodology available under 44-4-1203, MCA.

23.18.303 ENROLLMENT (1) through (3) remain the same.

(4) A representative of a participating agency must enter the following information into the data management system for each participant at the time of enrollment:

- (a) the participant's first and last names;
- (b) the participant's national identification or social security number;
- (c) the participant's program identifier;
- (d) the case docket number, jurisdiction, and judge;
- (e) the participant's gender, date of birth, race, ethnicity, email address, phone number, address, and current occupation;
- (f) the program start date;
- (g) the projected program end date;
- (h) the monitoring type;
- (i) offense;
- (j) the supervising agency;
- (k) the supervising agent; and

(l) the primary test site.

AUTH: 44-4-1204, MCA  
IMP: 44-4-1203, 44-4-1204, MCA

REASON: The department is not currently receiving uniform or regularly updated data relating to program participants. This rule amendment is reasonably necessary to ensure that data is collected and entered into the data management system for each program participant. This amendment provides for program consistency across all participating agencies. Accurate, comprehensive, and searchable data located in a single database is critical for making informed public policy decisions related to the program and to the public safety implications of drug and alcohol testing requirements in general.

23.18.304 TESTING AUTHORIZED (1) Except as provided in (3), a participant in the 24/7 sobriety program shall submit to alcohol testing at a central location through a twice-daily breath tests on a preliminary alcohol screening test device primary testing methodology.

(2) A participant who has been ordered to provide twice-daily breath tests shall report to the participating agency's testing location at two daily testing times approximately 12 hours apart. A trained person shall administer the required testing. The participant shall wait at least 20 minutes between an initial test with a non-negative test result and the confirmatory test.

(3) In cases of hardship, A participant ~~alternatively~~ may be ordered to submit to ~~continuous remote transdermal alcohol monitoring on a continuous remote transdermal alcohol monitoring device~~ a hardship testing methodology that appears on the department's list of approved methodologies, instruments, and vendors. Factors to be considered include whether:

- ~~(a) a device is available;~~
- ~~(b) the participant is capable of paying the fees and costs associated with continuous remote transdermal alcohol monitoring;~~
- ~~(c) the participant is capable of wearing the device; and-~~
- ~~(d) the participant does not qualify for twice-daily breath tests because of one or more of the following:~~
  - ~~(i) the participant lives in a rural area and submitting to twice-daily breath tests would be unduly burdensome;~~
  - ~~(ii) the participant's employment requires job performance at a location remote from the testing location and submitting to twice-daily breath tests would be unduly burdensome; or~~
  - ~~(iii) the participant repeatedly has violated the 24/7 sobriety program while submitting to twice-daily breath tests and poses a substantial risk of future violation.~~

(4) A participating agency shall record all testing results installations, removals, test results, confirmed tampers, and reasons for a participant's termination from the program in the data management system on a timely basis.

AUTH: 44-4-1204, MCA  
IMP: 44-4-1203, 44-4-1204, MCA

REASON: This rule amendment is reasonably necessary to reflect the distinction contained in Chapter 374, Laws of 2019 (Senate Bill 362), between primary and hardship testing methodologies and the new addition of remote breath testing as a hardship testing methodology. It is unclear whether all participating agencies have been utilizing trained personnel to administer the PAST testing with a standard deprivation period. The rule amendment to (2), requiring twice-daily breath testing to be administered by a certified individual with a 20-minute deprivation period, is reasonably necessary to establish a uniform statewide standard to that effect. The rule amendment to (3), eliminating the "factors" to be considered attendant to remote continuous transdermal alcohol monitoring, is reasonably necessary to reflect both: (1) the addition of remote breath testing as a hardship testing methodology; and (2) Senate Bill 362's inclusion of specific language regarding when a hardship methodology may be used. The rule amendment to (4), expanding the types of information to be timely recorded in the State's data management system, is reasonably necessary to establish consistency and address issues of delay the department has observed.

23.18.305 PARTICIPANT FEES (1) A 24/7 program participant may be charged a fee of up to \$30 each time a participant enrolls in a 24/7 sobriety program, in addition to any fees charged under (2) through (4).

~~(1)~~(2) A participating agency shall charge a participant who has been ordered to provide twice-daily breath tests a fee, which may not exceed the amount provided for in the vendor agreement.

~~(2)~~(3) A participating agency shall charge a participant who has been ordered to submit to ~~continuous~~ remote transdermal alcohol monitoring or remote breath testing the following fees and costs, which may not exceed the amounts provided for in the vendor agreement:

(a) a daily monitoring fee as provided for in the vendor agreement, which must be paid in advance on a one-week, two-week, or four-week basis;

(b) an installation/ or activation fee as provided for in the vendor agreement; and

(c) any repair or replacement costs due to misuse.

(4) A participating agency shall charge a participant who has been ordered to submit to the use of a drug patch or to saliva or urinalysis testing a fee which may not exceed the amount provided for in the vendor agreement.

AUTH: 44-4-1204, MCA

IMP: 44-4-1203, 44-4-1204, 44-4-1206, MCA

REASON: This rule amendment allows participating agencies to charge a participation fee upon program enrollment to help cover the program's administrative and operating costs. 1,230 participants enrolled in the 24/7 sobriety program in 2019. The number of people affected by this proposed rule amendment therefore would be about 1,200 per year. The cumulative amount of the fees for all persons affected would be about \$36,900. The amendment is reasonably necessary to afford an additional funding stream for a range of program support options (i.e.,

indigent participant support, new instruments, etc.) that may vary from location to location.

23.18.306 COLLECTION, DISTRIBUTION, AND USE OF ENROLLMENT AND TESTING FEES (1) remains the same.

(2) A participating agency shall distribute a portion of the testing fees to the participating vendors in accordance with the vendor agreements.

(3) The participation fees and the remainder of the testing fee proceeds are for the use of the participating agency and must be placed in the sobriety program account authorized in ARM 23.18.307. The fee proceeds may be used only for the purposes of administering the 24/7 sobriety program.

AUTH: 44-4-1204, MCA

IMP: 44-4-1203, 44-4-1204, 44-4-1206, MCA

REASON: This rule amendment is reasonably necessary to reflect the addition of the new participation fee to be authorized upon program enrollment as proposed in ARM 23.18.305(1) above and to clarify that the participation fee is for the use of the participating agencies and not subject to distribution to a participating vendor.

23.18.308 DATA MANAGEMENT SYSTEM (1) and (2) remain the same.

(3) The data management system must support breath testing (in-person and remote), continuous remote transdermal alcohol monitoring, drug patch testing, and urinalysis testing, and saliva testing. The data management system must also support an interactive voice response system for generating random drug test schedules.

(4) and (5) remain the same.

AUTH: 44-4-1204, MCA

IMP: 44-4-1203, 44-4-1204, 44-4-1206, MCA

REASON: This rule amendment is reasonably necessary to reflect the additional forms of testing referenced in Chapter 374, Laws of 2019 (Senate Bill 362), and these new rules, specifically remote breath and saliva testing. The amendment is also necessary to require compatibility with newer technology for the use of interactive voice systems as part of testing prompts and reminders.

23.18.309 24/7 SOBRIETY PROGRAM MANAGEMENT GROUP ADVISORY COUNCIL (1) The Attorney General shall establish a 24/7 sobriety program ~~management group~~ advisory council. The ~~group~~ council must include:

(a) remains the same.

(b) ~~two representatives from rural participating agencies, one representing eastern Montana and one representing western Montana~~ members of the judiciary, one from an urban area and one from a rural area;

(c) ~~two representatives from participating agencies, one from urban participating agencies, one representing eastern Montana and one from representing western Montana; and~~

- ~~(d) a representative from the Lewis and Clark County participating agency;~~
- ~~(d) two legislators appointed by the Attorney General, one from the majority party and one from the minority party; and~~
- ~~(e) up to two other at large members appointed by the Attorney General. At large members must be stakeholders involved in the program.~~
- (2) The Attorney General ~~shall meet at least annually with~~ may convene meetings of the 24/7 sobriety program management group advisory council to review the program and administrative rules.
- (3) Except as provided in (4), each appointed representative shall serve a term of two years. There shall be no limit on the number of terms a representative may serve.
- (4) One representative appointed pursuant to each subsection from (1)(b) through (1)(e) shall serve an initial term of one year.

AUTH: 44-4-1204, MCA  
IMP: 44-4-1204, MCA

REASON: The program has existed for eight years, the department now has a dedicated 24/7 program coordinator, and the council has not met for over two years. This rule amendment is reasonably necessary because the testing device and process landscape has solidified considerably since the program's inception and there is no longer a need for frequent council meetings or for active council involvement in the program operation and administration. This rule is also reasonably necessary to ensure advisory council members better reflect the program stakeholders across the state. The advisory council will now contain stakeholders from rural and urban jurisdictions, as well as judicial and legislative stakeholders, to provide varied and broad inputs from those that are involved in the program in different capacities.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jay Porteen, Department of Justice, 215 N. Sanders, P.O. Box 201401, Helena, MT 59601; (406) 437-4779 or email at Jay.Porteen@mt.gov, to be received no later than 5:00 p.m., November 6, 2020.

7. Jay Porteen, Department of Justice, has been designated to preside over and conduct this hearing.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on August 31, 2020, by text message on September 10, 2020, and by email and telephone on September 14, 2020.

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

/s/ Hannah E. Tokerud  
Hannah E. Tokerud  
Rule Reviewer

/s/ Timothy C. Fox  
Timothy C. Fox  
Attorney General

Certified to the Secretary of State September 29, 2020.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.101.402 definitions and the	)	PROPOSED AMENDMENT AND
adoption of New Rule I applicants with	)	ADOPTION
criminal convictions	)	

TO: All Concerned Persons

1. On November 5, 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 in the following ways:

(a) Join Zoom Meeting, <https://mt-gov.zoom.us/j/96560520996?pwd=N3BmRkZrUnFqUGlrR0EyNy9XeDZDZz09>  
Meeting ID: 965 6052 0996  
Password: 857546

OR

(b) Dial by telephone, +1 406 444 9999 or +1 646 558 8656,  
Meeting ID: 965 6052 0996  
Password: 857546

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 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 department no later than 5:00 p.m., on October 29, 2020, to advise us of the nature of the accommodation that you need. Please contact Debra Morrell, Business Standards Division, Department of Labor and Industry, 301 South Park Avenue, P.O. Box 200514, Helena, Montana 59620-0514; telephone (406) 841-2367; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2313; or [dmorrell@mt.gov](mailto:dmorrell@mt.gov).

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

24.101.402 DEFINITIONS As used in conjunction with Title 37, MCA, the following definitions apply:



(1) through (11) remain the same.

(12) "Nonroutine application" means an application that staff has determined requires board review, because it involves:

~~(a) a pending complaint or pending or final disciplinary action, in any jurisdiction, against a current or previously held professional or occupational license of any type;~~

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

~~(c) (b) materials that require evaluation by the professional members of the board to determine compliance with qualifications for licensure;~~

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

(13) through (17) remain the same.

(18) "Routine application" means an application that staff has determined does not require board review because:

(a) the application does not meet the definition of nonroutine; or

(b) all issues qualifying the application as nonroutine have already been decided by the board, e.g. in a prior application, and no additional relevant information is presented that suggests the need to reconsider that decision as determined in the discretion of licensing staff and by board rule.

(19) and (20) remain the same.

AUTH: 2-4-201, 37-1-101, MCA

IMP: 2-4-201, 37-1-101, 37-1-130, 37-1-131, 37-1-141, 37-1-321, MCA

REASON: The department determined it is reasonably necessary to amend this rule to align with the provisions proposed in NEW RULE I. Because the new rule contains further clarifying standards for staff to assist boards in issuing licenses for routine applications, the department is refining the definitions of both "routine" and "nonroutine" for consistency with current standardized processes.

The department is striking (12)(a) as the basis for nonroutine applications is adequately addressed in (12)(b) since all unprofessional conduct allegations must be premised on a violation of board law or rule. While a "pending complaint" is not itself a violation, the conduct underlying the complaint may be. In those instances, it is preferable to identify the violation of board law or rule under which the board would have authority to deny the application.

The department is amending (18) to authorize staff to issue licenses where potential violations or issues that would otherwise require the application to be board-reviewed have already been reviewed and decided. The department is also amending (18) to parallel the format of (12) by relocating staff's discretion to determine no board review. It is reasonably necessary to strike the reference to "board rule" because (12) addresses a board's ability to make rules to determine what is nonroutine since determining nonroutine is more feasible than delineating every "routine" situation in rule.

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

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

NEW RULE I APPLICANTS WITH CRIMINAL CONVICTIONS (1) The following criteria shall apply to determine whether an applicant's criminal conviction is related to the public health, welfare, and safety as it applies to the occupation:

(a) whether the occupation would offer the opportunity for the commission of the offense or similar offense;

(b) the vulnerability of the population served by the occupation to become victims of the offense or similar offense;

(c) the facts and circumstances of the conduct surrounding the offense; or

(d) other reasonable demonstration of relatedness.

(2) The following criteria shall apply to determine if the applicant, even while serving supervised release, is insufficiently rehabilitated to warrant the public trust:

(a) commission of multiple offenses;

(b) revocation or correctional intervention of the applicant's probation, parole, or conditional release;

(c) unsatisfied court-ordered conditions;

(d) lack of candor, misrepresentation, or omission in disclosing the offense or circumstances of the offense;

(e) statements that demonstrate lack of remorse or accountability for the conduct;

(f) unless good cause exists, failure to maintain education, training, or employment on at least a part-time basis; or

(g) other credible evidence of insufficient rehabilitation.

(3) The board shall, unless the conviction is exempt from board review as provided by this rule, determine whether enough time has passed since the applicant's conviction, release from incarceration, or discharge of sentence to evaluate rehabilitation given the nature and circumstances of the offense.

(4) An applicant will not be required to report:

(a) arrests that did not result in the above outcomes;

(b) convictions (juvenile adjudications) received when under 18, unless convicted as an adult; or

(c) misdemeanor driving violations, including driving under the influence, if sentenced more than five years before the submission date of the application.

(5) Unless board rule provides otherwise, authorized staff may determine there is no evidence of lack of rehabilitation and issue a license to an otherwise qualified applicant who meets the following criteria:

(a) Nonviolent misdemeanor convictions if the conviction date is more than two years before the application date, unless the applicant is still in custody due to the conviction.

(b) Nonviolent felony convictions if the conviction date is more than five years before the application date, unless the applicant is still in custody due to the conviction.

(6) Unless board rule provides otherwise, all violent misdemeanor or felony convictions and any nonviolent misdemeanor and nonviolent felony convictions not included in (5) must be reviewed by the board as nonroutine applications.

(7) Notwithstanding the screening criteria in (5)(a) and (b), staff may require board review of applicants who engaged in egregious conduct implicating risks to public safety.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 37-1-101, 37-1-104, 37-1-203, 37-1-205, 37-1-316, MCA

REASON: Recently, some states have passed legislation prohibiting "blanket bans" on criminal convictions and imposing relevancy and rehabilitation criteria for professional licensing agencies to apply to applicants with criminal convictions. The department has concluded that legislative reform is not necessary in Montana because Mont. Const. Art. II, Sec. 28 Criminal Justice Policy – Rights of the Convicted and Title 37, Ch. 1, part 2, MCA, regarding the licensure of criminal offenders already prohibits blanket bans on criminal convictions and requires boards to apply relevancy and rehabilitation to their licensing decisions. The department determined it is reasonably necessary to adopt NEW RULE I to formally establish in rule the informal processes currently followed by the Business Standards Division and the administratively attached licensing boards to uniformly and consistently inform potential applicants, the public, and future board members and staff.

The rule will also limit the reporting of driving violations of a certain age because while driving may be incidental to the practice of a profession, driving is not within the statutorily defined scope of practice of any profession regulated within the department. The Montana Department of Justice, Division of Motor Vehicles, prosecuting offices and courts have jurisdiction over the competent operation of motor vehicles through the issuance or limitation of driving privileges. Only recent driving violations are potentially relevant to exclude current mental or chemical dependency impairment that may adversely impact an applicant's ability to practice safely. The department is proposing to adopt a five-year period to account for potential relapse cycles but reduce the time and cost to process driving violations older than five years.

The department is also adopting this new rule to create a standard formula for boards, should they adopt the division rule by reference, to exclude consideration of convictions that are older and less serious where the applicant appears to be rehabilitated. Where boards have adopted rules to limit the type or age of conviction required for board review, unintentional variations in licensing approaches have negatively impacted the uniform standards that license processing staff follow and apply. For example, some utilize the date of sentence discharge to measure the elapsed time and others use the date of conviction.

The rule will authorize and guide staff to issue licenses where there is no evidence contradicting the applicant's rehabilitation, but still provide staff with the ability to identify egregious cases that should have board review. While boards retain the discretion to adopt different time elapse limitations than in this rule, or give more scrutiny to specific convictions of concern to the board (ex. drugs for pharmacists, fraud and theft for fiduciary license types, fish and game for outfitters), the division rule will provide a consistent framework and terminology to standardize and increase efficiency in licensure operations, reduce costs, and reduce processing time of applications that should be considered as routine.

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 Business Standards Division, Department of Labor and Industry, 301 South Park Avenue, P.O. Box 200514, Helena, Montana 59620-0514, by facsimile to (406) 841-2313, or e-mail to damoe@mt.gov, and must be received no later than 5:00 p.m., November 6, 2020.

6. An electronic copy of this notice of public hearing is available at <http://bsd.dli.mt.gov> (department's web site). Although the department strives to keep its web site accessible at all times, concerned persons should be aware that web site 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 department maintains a list of interested persons who wish to receive notices of rulemaking actions. 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 Business Standards Division 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 Debra Morrell, Business Standards Division, Department of Labor and Industry, 301 South Park Avenue, P.O. Box 200514, Helena, Montana 59620-0514; faxed to the office at (406) 841-2313; e-mailed to [dmorrell@mt.gov](mailto:dmorrell@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 department has determined that the amendment of ARM 24.101.402 will not significantly and directly impact small businesses.

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

Documentation of the department's above-stated determinations is available upon request to the Business Standards Division, Department of Labor and Industry, 301 South Park Avenue, P.O. Box 200514, Helena, Montana 59620-0514; telephone (406) 841-2327; facsimile (406) 841-2313; or to [damoe@mt.gov](mailto:damoe@mt.gov).

10. Darcee L. Moe, Legal Counsel, has been designated to preside over and conduct this hearing.

/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 September 29, 2020.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.104.601, 37.104.604, ) PROPOSED AMENDMENT  
37.104.606, 37.104.615, and )  
37.104.616 pertaining to automated )  
external defibrillators (AED) )

TO: All Concerned Persons

1. On October 29, 2020, at 10:00 a.m., the Department of Public Health and Human Services 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 coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at <https://mt-gov.zoom.us/j/96400155640>, meeting ID: 964 0015 5640; or

(b) Dial by telephone +1 646 558 8656, meeting ID: 964 0015 5640. Find your local number: <https://mt-gov.zoom.us/j/96400155640>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on October 23, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

37.104.601 DEFINITIONS The following definitions apply to this chapter, in addition to the definitions contained in 50-6-501, MCA:

(1) "Automated external defibrillators (AED) training program" means a course of instruction approved by the department which provides the initial education in the use of the AED and which has requirements for continued assurance of the competency of individuals in using an AED and CPR.

(2) "CPR" means cardiopulmonary resuscitation.

(3) ~~"Medical supervisor" means a physician, physician assistant, registered nurse, or nurse practitioner licensed in Montana who completes a training program provided by the department and who agrees to provide medical supervision to an approved AED program.~~

(3) "Entity manager" means the individual responsible for maintaining the automated external defibrillator (AED) according to manufacturer recommendations, registering the device with the state electronic registration site, recording all upkeep/maintenance and training information, and reporting all uses/incidents.

AUTH: 50-6-503, MCA

IMP: 50-6-501, MCA

37.104.604 WRITTEN PLAN (1) An entity wishing to use or allow the use of an AED shall develop, update as changes are made, and adhere to a written plan that register the AED with the department using the electronic registration site. Registration includes the following information:

(a) for a stationary location, specifies the physical address where the AED will be located;

(b) for a mobile location, specifies the geographic area in which the AED will be used and specifies how the AED will be transported to the scene of a cardiac arrest;

(c) includes the names of the individuals currently authorized to use the AED;

(d) describes how assurances the AED use will be coordinated with each licensed emergency medical service providing coverage in the area where the AED is located, including how emergency medical services will be activated every time that an AED is attached to a patient;

(e) specifies the name, telephone number(s), and address of the Montana licensed medical supervisor who will be providing medical supervision to the AED program and how the medical supervisor, or the medical supervisor's designee, will supervise the AED program;

(f) specifies the name, telephone number(s), and address of the medical supervisor's designee, if any, who will assist the medical supervisor in supervising the AED program;

(g) (e) specifies the maintenance procedures for the AED, including how it will be maintained, tested, and operated according to the manufacturer's guidelines;

(h) (f) requires assurances that written or electronic records of all maintenance and testing performed on the AED will be kept; and

(i) describes the records that will be maintained by the program; and

(j) (g) describes how assurances that the required electronic reports of AED use will be made to the medical supervisor of the AED program, or their designee, and to the department.

AUTH: 50-6-503, MCA

IMP: 50-6-501, 50-6-503, MCA

37.104.606 REPORTS (1) Every time an AED is attached to a patient, its use must be reported to the medical supervisor or the medical supervisor's designee and the report must include the information required by the medical supervisor.

(2) (1) Every time an AED is attached to a patient, the medical supervisor or the medical supervisor's designee entity manager shall provide to the department,

on a form provided by the department, the following information through the electronic portal:

- (a) the name of the entity responsible for the AED;
- ~~(b) the name, address, and telephone number of the medical supervisor;~~
- ~~(c) (b)~~ the date of the call;
- ~~(d) (c)~~ the age of the patient;
- ~~(e) (d)~~ the gender of the patient;
- ~~(f) (e)~~ location of the cardiac arrest;
- ~~(g) (f)~~ estimated time of the cardiac arrest;
- ~~(h) (g)~~ whether or not CPR was initiated prior to the application of the AED;
- ~~(i) (h)~~ whether or not the cardiac arrest was witnessed;
- ~~(j) (i)~~ the time the first shock was delivered to the patient;
- ~~(k) (j)~~ the total number of shocks delivered;
- ~~(l) (k)~~ whether or not there was a pulse after the shocks and whether or not the pulse was sustained; and
- ~~(m) (l)~~ whether or not the patient was transported, and if so, the name of the transporting agency and the location to which the patient was transported.

AUTH: 50-6-503, MCA

IMP: 50-6-502, 50-6-503, MCA

37.104.615 MEDICAL PROTOCOL (1) A medical protocol for defibrillation use must be consistent with the requirements for defibrillation set out in the ~~"2005 American Heart Association Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiac Care"~~ published in "Circulation", a journal of the American Heart Association, November 29, 2005, Volume 112, Issue 22 Supplement, and in the ~~2005 American Heart Association Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiac Care.~~ "2015 AHA Guidelines Update for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC) Science" published in "Circulation," a journal of the American Heart Association, November 3, 2015, Volume 132, Issue 18 Supplement 2 and in the 2015 American Heart Association Guidelines for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(2) The department adopts and incorporates by reference the guidelines for defibrillation referred to in (1), which set guidelines for proper defibrillation. A copy of the documents referred to in (1) may be obtained from the American Heart Association at [http://circ.ahajournals.org/content/vol112/24\\_suppl/](http://circ.ahajournals.org/content/vol112/24_suppl/) [https://www.ahajournals.org/toc/circ/132/18\\_suppl\\_2](https://www.ahajournals.org/toc/circ/132/18_suppl_2).

AUTH: 50-6-503, MCA

IMP: 50-6-502, MCA

37.104.616 REQUIREMENTS OF AUTOMATED EXTERNAL DEFIBRILLATORS (AED) (1) An AED used by an AED program must be a unit approved by the U.S. Food and Drug Administration in accordance with its Final Order established Feb 2015.

(2) A copy of the Final Order referred to in (1) may be obtained from the U.S. Food and Drug Administration:  
<https://www.federalregister.gov/documents/2015/02/03/2015-02049/effective-date-of-requirement-for-premarket-approval-for-automated-external-defibrillator-systems>.

AUTH: 50-6-503, MCA

IMP: 50-6-503, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.104.601, 37.104.604, 37.104.606, 37.104.615, and 37.104.616 pertaining to automated external defibrillator (AED) devices.

The department is proposing to revise these rules for two primary reasons. First, the department has recently procured software that enables entities providing public AED access to meet registration requirements through an online process. The proposed rule revisions will allow for implementation and use of this new software system. Second, American Heart Association Guidelines and Food and Drug Administration (FDA) requirements reflecting AED device best practices have changed since the rules were last revised. The proposed rule revisions update references to the current version of these guidelines and requirements.

##### ARM 37.104.601 Definitions

This rule defines terms related to a public access defibrillation program. The department is proposing to revise the definitions within this rule for clarity and to align with updates being proposed to the other rules. A new definition is proposed to define the term "entity manager." Additionally, the department is proposing to remove the definition of "medical supervisor" since the term is no longer used under the proposed rules. Finding an appropriate medical supervisor has been a significant barrier for entities wishing to begin an AED program. Due to the improved transmission ability of the devices, the event recordings can be transmitted to the department for review and feedback, rather than requiring an "on-site" medical supervisor.

##### ARM 37.104.604 Written Plan

This rule specifies the requirements for a written AED plan. The department has recently procured software that allows an entity to submit its plan online in lieu of using a paper form. The department is proposing to revise this rule to take into account use of the new software system. By completing the online registration, the entity assures the device will be used and maintained appropriately and be integrated into the 911 emergency system. Since the requirement for an on-site medical supervisor is no longer required, the department is proposing to remove the current language in (1)(e). Each entity must continue to maintain records of device



maintenance and individual training. Notification of a device deployment through the web-based portal is still required.

#### ARM 37.104.606 Reports

This rule outlines the requirements for a report if an AED device is attached to a patient. The department is proposing to revise this rule to align with the revisions made to ARM 37.104.604 by requiring that reports be sent only to the department and the entity manager using the online reporting site. The proposed rule change is necessary to ensure consistency between the rules.

#### 37.104.615 Medical Protocol

This rule establishes the medical basis for the use of an AED. The department is proposing to revise this rule to reference updated guidance from the American Heart Association that aligns with best practices relating to AED use.

#### 37.104.616 Requirements of Automated External Defibrillators (AED)

This rule establishes the requirements for approved AED devices. The department is proposing to revise the rule to reference the most current FDA requirements governing approved AED devices.

#### Fiscal Impact

This proposed rule amendment is anticipated to have no fiscal impact to the state.

The proposed rulemaking is estimated to affect approximately 1,000 registered entities and approximately 1,000 non-registered entities. The department does not anticipate the proposed rulemaking will have a significant fiscal impact on these entities.

The department intends for these proposed rule amendments to be effective upon the date of adoption.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., November 6, 2020.

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

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

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

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

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

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

/s/ Laura Smith for Sheila Hogan  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State September 29, 2020.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.18.121 pertaining to updates ) PROPOSED AMENDMENT  
to the Montana Reappraisal Plan and )  
Classification and Valuation Manuals )

TO: All Concerned Persons

1. On October 30, 2020, at 10:00 a.m., the Department of Revenue will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested persons may access the public hearing in the following ways:

- (a) Join Zoom Meeting: <https://mt-gov.zoom.us/j/95685200660>, Meeting ID: 956 8520 0660;
- (b) Dial by Telephone: +1.406.444.9999 or +1.646.558.8656, Meeting ID: 956 8520 0660;
- (c) Join by SIP: 95685200660@zoomcrc.com;
- (d) Join by H.323 (Polycom): 162.255.37.11## 95685200660; or
- (e) Join by Skype for Business: <https://mt-gov.zoom.us/skype/95685200660>.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on October 16, 2020. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or [todd.olson@mt.gov](mailto:todd.olson@mt.gov).

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

42.18.121 PURPOSE; ADOPTION OF MONTANA REAPPRAISAL PLAN AND MANUALS; VALUATION CYCLES (1) and (2) remain the same.

(3) The department adopts and incorporates by reference the Plan, the Montana Residential, Commercial, and Industrial Property Classification and Valuation Manual, and the Montana Agricultural Land Classification and Valuation Manual, all dated January 1, ~~2019~~ 2021. The department also adopts and incorporates by reference the Montana Forest Land Classification and Valuation Manual dated ~~October 10, 2014 (revised October 4, 2018)~~ January 1, 2021. Each manual explains how the department classifies and values subject property types. A copy of the Plan and the manuals may be obtained from the Department of Revenue, Property Assessment Division, P.O. Box 8018, Helena, MT 59604-8018, and on the department's web site at <https://mtrevenue.gov/publications/property-reappraisal-plan-manuals>.

(4) Class four residential, commercial, and industrial property is appraised at

its market value as of January 1, 2018 2020, for the 2019-2020 2021-2022 valuation cycle.

(5) Class three agricultural land is appraised at its productivity value as of January 1, 2018 2020, for the 2019-2020 2021-2022 valuation cycle. Agricultural land values reflect productivity values in accordance with 15-7-201 and ~~15-44-103~~, MCA.

(6) Class ten forest land is appraised at its productivity value as of January 1, 2014 2020, for the 2015-2020 2021-2026 valuation cycle. Forest land values reflect productivity values in accordance with ~~15-7-201~~ and 15-44-103, MCA.

(7) For the purposes of these rules, the terms "reappraisal cycle" and "valuation cycle" are considered synonymous and interchangeable.

AUTH: 15-1-201, 15-7-111, 15-7-201, MCA

IMP: 15-7-101, 15-7-103, 15-7-111, 15-7-112, 15-7-201, 15-44-103, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.18.121 which is necessary to adopt the department's proposed revisions to the Plan and manuals, adopted and incorporated by reference in (3), and to amend the valuation cycle dates for each property class in (4) through (6) - all of which begin on January 1, 2021.

Generally, the department's proposed Plan and manual updates, which are available for review at the website address for the current Plan and manuals described in (3), improve grammar and formatting of content from the current documents; improve descriptions of the department's business practices and classification and valuation processes; and update cross-references to supporting rules or amended statutes.

In the Montana Residential, Commercial, and Industrial Property Classification and Valuation Manual, the department proposes specific revisions to the income models development and income approach sections and a necessary update to the definition for "commercial property" for consistency with statute.

In the Agricultural Land Classification and Valuation Manual, the department proposes updates to the irrigated land valuation section to reflect legislative changes to 15-7-201, MCA, implemented under House Bill 24 (2019). HB 24 revised the water cost variable in the valuation formula for irrigated land and the department's implementation of HB 24 is pending under MAR Notice No. 42-1023 as of the publication of this notice. Other proposed changes include updates to commodity prices used for class three valuation and incorporating language from ARM 42.20.171, which is currently proposed for repeal in MAR Notice No. 42-1021, and other former rule text describing more procedurally based classification requirements.

The Forest Land Classification and Valuation Manual's (Forest Manual) current content is very technical and contains a large amount of historic forest land taxation information which makes it a difficult reference for laypeople. The department proposes a substantively new version of the Forest Manual with less technical and background information. The proposed Forest Manual is a more reader-friendly, non-technical resource with improved explanations regarding forest land classification and valuation, including a natural disaster section to describe

current department business practices.

Lastly, the department proposes removing the reference to 15-44-103, MCA, from (5), because it pertains to forest land valuation and not agricultural land valuation. Likewise, in (6), the department proposes removing the reference to 15-7-201, MCA, because it pertains to agricultural land valuation and not forest land valuation.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [todd.olson@mt.gov](mailto:todd.olson@mt.gov) and must be received no later than November 9, 2020.

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

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696 or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

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

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

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Gene Walborn  
Gene Walborn  
Director of Revenue

Certified to the Secretary of State September 29, 2020.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 2.59.1757 pertaining to )  
designated manager supervisory )  
requirements )

TO: All Concerned Persons

1. On August 28, 2020, the Department of Administration published MAR Notice No. 2-59-604 pertaining to the proposed amendment of the above-stated rule at page 1544 of the 2020 Montana Administrative Register, Issue Number 16.

2. The department received comments in response to the proposal. A summary of each comment and the department's response is set forth below:

COMMENT #1: The department received a comment in support of the proposal stating, in part, "The department's proposal to allow license applicants to elect how to submit the information strikes a balance allowing existing licensees and new license applicants with clear policies to avoid the added maintenance of the form, and smaller organizations or those electing to emphasize the regulatory requirements with their supervisors to use the prescribed form."

RESPONSE #1: The department appreciates and agrees with the comment.

COMMENT #2: A commenter offered several suggestions for clarification regarding remote work and branch offices.

RESPONSE #2: While the department appreciates the comments, they are beyond the scope of the proposed rule amendments and cannot be included in this final notice. The department has noted the suggestions and may consider including them in a subsequent rulemaking project.

3. The department has amended ARM 2.59.1757 exactly as proposed.

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

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

Certified to the Secretary of State September 29, 2020.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 2.59.1738 pertaining to renewal )  
fees of mortgage brokers, mortgage )  
lenders, mortgage servicers, and )  
mortgage loan originators )

TO: All Concerned Persons

1. On August 28, 2020, the Department of Administration published MAR Notice No. 2-59-606 pertaining to the proposed amendment of the above-stated rule at page 1547 of the 2020 Montana Administrative Register, Issue Number 16.

2. The department received two comments in response to the proposal. A summary of the comments and the department's response is set forth below:

COMMENT #1: The department received a comment in support of the proposal stating, "The fee reductions contained in the amendment of ARM 2.59.1738 are mindful of the variety of unanticipated impacts of the COVID-19 pandemic. During the past six months, loan servicers have been obligated to advance funds on behalf of borrowers in forbearance, lenders are spending more time and resources to empower remote workers, and routine interactions in daily life have been disrupted. The reduced licensing fees are a meaningful gesture from the department to its licensees."

RESPONSE #1: The department appreciates and agrees with the comment.

COMMENT #2: The department received a comment in support of the proposal stating, "The proposed reduction in renewal fees comes at a time when banks (lenders) face great uncertainty and profits are squeezed due to forbearances, delinquencies, and lower net interest margins. The banks of Montana appreciate the Department of Administration's recognition of the challenges we face and the proposal to significantly reduce license renewal fees for the coming year."

RESPONSE #2: The department appreciates and agrees with the comment.

3. The department has amended ARM 2.59.1738 exactly as proposed.

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

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

Certified to the Secretary of State September 29, 2020.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 4.9.402 and ARM 4.21.402 and	)	ADOPTION
the adoption of New Rule I and New	)	
Rule II pertaining to Violations in	)	
Commodity Reporting	)	

TO: All Concerned Persons

1. On June 26, 2020, the Department of Agriculture published MAR Notice No. 4-20-268 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 1042 of the 2020 Montana Administrative Register, Issue Number 12.
2. The department has amended the above-stated rules as proposed.
3. The department has adopted the following rules as proposed: New Rules I (4.9.404) and II (4.21.404).
4. No comments or testimony were received.

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Department of Agriculture

Certified to the Secretary of State September 29, 2020.



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

In the matter of the emergency ) NOTICE OF TEMPORARY  
amendment of ARM 24.156.2771 ) EMERGENCY RULE AMENDMENT  
pertaining to ECP scope of practice )

TO: All Concerned Persons

1. The Montana Board of Medical Examiners (board) is adopting a temporary emergency amendment to ARM 24.156.2771. Industry stakeholder groups have informed the board that ARM 24.156.2771(7)(c) causes unnecessary administrative burden and impacts their ability to provide emergency care for personnel on wildland fires. Specifically, wildland firefighting agencies state that their personnel need to be able to practice up to the basic Emergency Medical Technician (EMT) level in order to transport injured personnel to facilities and provide an appropriate level of medical care on the fire line. Stakeholders also point out that in-state EMTs practicing at the basic EMT level are not required to practice under the oversight of a medical director. The agencies argue that requiring out-of-state EMTs to practice at the basic level under the oversight of a Montana-licensed medical director is an additional encumbrance to their practice. The COVID-19 pandemic has exacerbated this burden. When the board proposed rule changes as part of MAR Notice No. 24-156-85, the criticisms now offered were not submitted as public comment. The board has determined that public safety is not compromised by allowing EMTs to practice at the basic EMT level without such medical direction. The chief legal counsel of the Department of Labor and Industry has concluded that emergency rulemaking is required to make these changes effective before the end of fire season.

2. The temporary emergency amendment is effective September 21, 2020, when this rule notice is filed with the Secretary of State.

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

24.156.2771 ECP SCOPE OF PRACTICE (1) through (6) remain the same.

(7) An ECP currently licensed and in good standing in another state may function during a state or federally managed incident in compliance with the Montana ECP Practice Guidelines, but shall comply with all of the following:

(a) and (b) remain the same.

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

may only occur if the ECP has medical direction oversight provided by a Montana licensed physician or physician assistant approved by the board as a medical director, and the medical director authorizes the ECP to function beyond the basic EMT level;

(d) through (8) remain the same.

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

4. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency amendment.

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

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

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 September 21, 2020.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 24.301.1003 assessment and	)	
collection of civil penalties,	)	
24.301.1007 collection of annual fees,	)	
24.301.1009 disputes regarding	)	
penalties and fines – mediation, and	)	
24.301.1011 training and educational	)	
grants, all pertaining to the	)	
Underground Facility Protection	)	
Program	)	

TO: All Concerned Persons

1. On August 7, 2020, the Department of Labor and Industry (department) published MAR Notice No. 24-301-348 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1463 of the 2020 Montana Administrative Register, Issue No. 15. On August 28, 2020, the department published an amended notice of public hearing and extension of comment period at page 1572 of the 2020 Montana Administrative Register, Issue No. 16.

2. On September 18, 2020, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments were received by the September 25, 2020 deadline.

3. The department has amended ARM 24.301.1003, 24.301.1007, 24.301.1009, and 24.301.1011 exactly as proposed.

/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 September 29, 2020.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF ADOPTION  
RULE I pertaining to label review )  
TO: All Concerned Persons

1. On July 10, 2020, the Department of Livestock published MAR Notice No. 32-20-308 regarding the proposed adoption of the above-stated rule at page 1278 of the 2020 Montana Administrative Register, Issue Number 13.

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

NEW RULE I (32.6.715) LABEL REVIEW (1) through (4) remain as proposed.

(5) The department's acceptance of a label is valid for ~~two~~ three years from the date the acceptance was issued unless the department provides a shorter time period in its acceptance. Establishments must resubmit labels for renewal after the acceptance period has expired.

(6) remains as proposed.

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

COMMENT #1: The commenter supports review of labels by the department but is concerned about the burden a two-year re-approval timeline would put on the department's label specialist and worried that plants would be out of compliance and unable to produce those products if labels were not reapproved by the deadline.

RESPONSE #1: The department agrees that label review is an important service and thanks the commenter. Based on this comment and others received, the department has amended the rule to extend the renewal period to three years.

COMMENT #2: The commenter believes that the two-year renewal period is overly burdensome to state-inspected establishments.

RESPONSE #2: The renewal process for labels with no changes will be very simple, and to reduce the burden on establishments the department has extended the renewal period to three years.

COMMENT #3: The commenter states that the federal labeling regulation is much easier than the proposed rule and that only labels with ingredient changes should be required to be resubmitted.

RESPONSE #3: The department strongly believes that label review is an important service for state-inspected establishments, many of which do not have the resources to consult an outside expert on complicated label requirements. The department

has found that many state-inspected establishments are not aware of when an ingredient change occurs because suppliers do not usually announce changes to common spice mixes or other multi-component ingredients. This rule is intended to help make establishments more aware of when there is a need to update their labels. For labels with no changes, the renewal process will be very simple, and the department has extended the renewal period to three years to further reduce the burden on establishments.

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

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

Certified to the Secretary of State September 29, 2020.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 32.3.217 special requirements )  
for poultry and 32.3.221 special )  
requirements for alternative livestock )

TO: All Concerned Persons

1. On August 7, 2020, the Department of Livestock published MAR Notice No. 32-20-311 pertaining to the proposed amendment of the above-stated rules at page 1472 of the 2020 Montana Administrative Register, Issue Number 15.

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

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

COMMENT #1: The department received one comment in support of the proposed changes to brucellosis testing requirements for imported cervids. The comment touched on the lack of a detection of brucellosis in farmed deer or elk, outside of the Greater Yellowstone Area (GYA), over the last 20 years, and the USAHA resolution encouraging states to eliminate interstate brucellosis testing requirements for cervids that originate outside of the GYA.

RESPONSE #1: The department appreciates the submitted comment and agrees.

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

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

Certified to the Secretary of State September 29, 2020.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.70.305, 37.70.311, )  
37.70.401, 37.70.402, 37.70.406, )  
37.70.407, 37.70.408, 37.70.601, )  
37.70.607, and 37.70.901 pertaining )  
to low income energy assistance )  
program (LIEAP) )

TO: All Concerned Persons

1. On August 28, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-929 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1582 of the 2020 Montana Administrative Register, Issue Number 16.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.
4. The department intends to apply these rule amendments retroactively to October 1, 2020. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

/s/ Ann Hefenieder  
Ann Hefenieder  
Rule Reviewer

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

Certified to the Secretary of State September 29, 2020.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.104.3025 pertaining to )  
trauma facility designation )

TO: All Concerned Persons

1. On August 28, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-930 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1591 of the 2020 Montana Administrative Register, Issue Number 16.

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

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

COMMENT #1: A commenter expressed support for the rule as proposed.

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

4. This rule amendment is effective October 10, 2020.

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

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

Certified to the Secretary of State September 29, 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 March 31, 2020. This table includes notices in which those rules adopted during the period April 17, 2020, through September 25, 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 March 31, 2020, 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 2020 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

### ADMINISTRATION, Department of, Title 2

2-13-605	Next Generation 9-1-1 Technology Standards and Baseline Principles, p. 1719
2-59-596	Banking - Bank Branches - Limitations on Loans - Bank Branch Relocations, p. 1296, 1698
2-59-597	Extension of Time Periods for Annual Reporting to Escrow Businesses, Quarterly Reporting for Mortgage Services, and Abandonment of Initial Mortgage License Applications Related to the COVID-19 Pandemic, p. 654
2-59-598	Annual Meetings Held by Banks and Credit Unions During the COVID-19 Pandemic, p. 657
2-59-599	Semiannual Assessments of Banks and Supervisory Fees of Credit Unions Related to the COVID-19 Pandemic, p. 897
2-59-600	Semiannual Assessment for Banks, p. 1039, 1515
2-59-602	Report Due Dates for Mortgage Servicers - When Initial Mortgage License Applications Are Deemed Abandoned, p. 1247, 1615
2-59-603	Adoption of Model Bylaws and Statutory Reference, p. 1316, 1704
2-59-604	Designated Manager Supervisory Requirements, p. 1544
2-59-606	Renewal Fees of Mortgage Brokers, Mortgage Lenders, Mortgage Servicers, and Mortgage Loan Originators, p. 1547

(Public Employees' Retirement Board)

2-43-594 Investment Policy Statements for the Defined Contribution Retirement

- 2-43-601 Plan and the 457(b) Deferred Compensation Plan, p. 347, 1117  
Adoption by Reference of the State of Montana Public Employee  
Defined Contribution Plan Document and the Public Employee  
Deferred Compensation (457) Plan Document, p. 1035, 1614

AGRICULTURE, Department of, Title 4

- 4-20-264 Student Loan Assistance Program, p. 123, 570, 776  
4-20-266 Restricted Weed Seeds, p. 514, 1018  
4-20-267 Commodity Dealer Licenses, p. 517, 1019  
4-20-268 Violations in Commodity Reporting, p. 1042  
4-20-269 Montana Hemp Research and Market Development Program, p. 1319

STATE AUDITOR, Office of, Title 6

- 6-250 Securities Regulation - Filings - Securities Exemptions - Fraudulent  
and Unethical Practices - Broker-Dealers and Investment Advisers -  
Transactional Exemption, p. 719  
6-261 Surety Insurance Producers Who Sell, Solicit, or Negotiate  
Commercial Bail Bonds, p. 739

(Classification Review Committee)

- 6-262 Establishment, Deletion, or Revision of Classifications for Various  
Industries for Supplementing the NCCI Basic Manual for Workers'  
Compensation and Employers Liability Insurance, p. 1014, 1734

COMMERCE, Department of, Title 8

- 8-22-181 Board of Horse Racing, p. 433, 777  
8-94-180 Governing the Submission and Review of Applications for Funding  
Under the Treasure State Endowment Program (TSEP), p. 350, 660  
8-94-182 Administration of the CDBG Program, p. 436, 778  
8-94-183 Administration of the CDBG Program, p. 523, 956  
8-94-184 Administration of the 2021 Biennium Federal Community Development  
Block Grant (CDBG) Program—Planning Grants, p. 1378, 1735

EDUCATION, Title 10

(Board of Public Education)

- 10-53-137 Technology Integration Content Standards, p. 1380  
10-54-134 K-12 Career and Technical Education Content Standards, p. 1398  
10-55-135 K-12 Computer Science Content Standards, p. 1416  
10-55-136 Library Media Content Standards, p. 1428  
10-55-138 K-12 Social Studies Content Standards, p. 1446

(Office of Public Instruction)

- 10-13-133 Traffic Education, p. 939, 1281

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12-525 Public Access Land Agreements, p. 129, 779
- 12-527 Replacement Licenses, p. 352, 900
- 12-528 Closing the Smith River From Camp Baker to Eden Bridge, p. 662
- 12-529 Closing Bird Island on Flathead Lake in Lake County, p. 1616
- 12-530 Closing the Shields River to All Motorized Watercraft, p. 1690
- 12-532 Closing Spring Meadow Lake State Park in Lewis and Clark County, p. 1705

(Fish and Wildlife Commission)

- 12-531 Recreational Use on the Madison River, p. 1722

GOVERNOR, Office of, Title 14

- 14-7 Energy Supply Emergency Rules, p. 136, 1322

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17-406 Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) Waste, p. 1239, 159, 1118
- 17-409 Wind Generation Facility and Solar Facility Decommissioning and Bonding, p. 231, 957
- 17-410 Incorporation by Reference - Definitions - Asbestos Project Permits - Training Provider Requirements - Fees - Refunds, p. 354, 525, 633, 1150, 1325

(Board of Environmental Review)

- 17-411 MPDES Program Updates, p. 750, 942
- 17-412 Natural and Nonanthropogenic Water Quality Standards, p. 765, 944, 1618
- 17-413 Air Quality Operation Fees, p. 1550

TRANSPORTATION, Department of, Title 18

- 18-180 Motor Carrier Services Safety Requirements, p. 769, 1020
- 18-181 MDT Employee Grievance Procedures, p. 840, 1045, 1516
- 18-182 Motor Carrier Services, p. 1251, 1626

CORRECTIONS, Department of, Title 20

(Board of Pardons and Parole)

- 20-25-70 Parole Guidelines - Conditional Discharge From Supervision, p. 1556, 1693

JUSTICE, Department of, Title 23

23-16-259 Late Payment Penalties on Quarterly VGM Taxes, p. 666

(POST Council)

23-13-257 Certification of Public Safety Officers, p. 1940, 580, 664

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department notices.

- 24-2-361 Commissioner's Active Supervision of the Board of Professional Engineers and Professional Land Surveyors Regarding a Proposed Rule Adding Experience With the Public Land Survey System, p. 1461
- 24-11-357 Unemployment Insurance Benefits Related to the COVID-19 Pandemic, p. 787
- 24-11-360 Unemployment Insurance Benefits Related to the COVID-19 Pandemic, p. 1264, 1628
- 24-29-354 Medical Fee Schedules for Workers' Compensation Purposes, p. 634, 1021
- 24-101-308 Registration for Out-of-State Volunteer Professionals, p. 946, 1326
- 24-301-348 Underground Facility Protection Program - Assessment and Collection of Civil Penalties - Collection of Annual Fees - Disputes Regarding Penalties and Fines—Mediation - Training and Educational Grants, p. 1463, 1572
- 24-351-356 Waiver of Fuel Specifications Related to the COVID-19 Pandemic, p. 793

(Board of Architects and Landscape Architects)

- 24-114-38 Licensure of Applicants Registered in Another State - Landscape Architect Licensure by Endorsement, p. 167, 790

(Board of Chiropractors)

- 24-126-37 Continuing Education Requirements - Acceptable Continuing Education - Dry Needling, p. 638, 1737

(Board of Dentistry)

- 24-138-78 Approved Clinical Exam Criteria for Dentists and Dental Hygienists - Specialty Advertising - Dental Hygienists—Temporary Practice Permits, p. 1268, 1631

(Board of Funeral Service)

- 24-147-40 Definitions - Fee Schedule - Name Change, Closure, Transfer, or Change of Ownership—Mortuary, Branch Establishment, Crematory, or Cemetery - Mortician Licenses - Crematory Records - Cremation Authorizations - Integrity of Identification of Human Remains -

Cremation Procedures - Crematory Prohibitions - Requirements for Sale of At-Need, Preneed, and Prepaid Funeral Arrangements - Continuing Education Requirements—Morticians - Unprofessional Conduct - Preneed Arrangements—Notification of Closure or Change of Ownership—Mortuary, Branch Establishment, or Crematory, p. 1769, 670

(Board of Massage Therapy)

24-155-8 Licensure of Out-of-State Applicants - Unprofessional Conduct - Records - Standards of Practice, p. 9, 247, 1327

(Board of Medical Examiners)

24-156-86 Application for Licensure - Chart Review - Definitions - ECP Licensure Qualifications - ECP License Application - Continuing Education and Refresher Requirements - ECP Training Courses - Medical Direction - Levels of ECP Licensure Including Endorsements - ECP Scope of Practice - CIHC Endorsement, p. 18, 679

24-156-87 Definitions - Training of Student Physician Assistants - Application for Physician Assistant License - Physician Assistant Fees - Reporting to the Board - Supervision of Physician Assistant - Patient Rights - Unprofessional Conduct - Management of Infectious Wastes - Physician Assistant License Renewal, p. 1561

24-156-88 ECP Training Courses, p. 644, 963

(Board of Nursing)

24-159-90 Proposed 2020 Rulemaking by the Interstate Commission of Nurse Licensure Compact Administrators, p. 647

24-159-91 Curriculum Goals and General Requirements for Programs, p. 648, 965

(Board of Optometry)

24-168-44 General Practice Requirements - Continuing Education Requirements—Audit - Approved Continuing Education - Unprofessional Conduct - Board Meetings, p. 256, 901

(Board of Outfitters)

24-171-40 Outfitter Records - Safety and First Aid Provisions - Operations Plans and Amendments - Unprofessional Conduct and Misconduct, p. 28, 262, 1157

(Board of Pharmacy)

24-174-75 Suspension of Telepharmacy Monthly Inspections in Response to the COVID-19 Pandemic, p. 902

(Board of Physical Therapy Examiners)

24-177-35 Fees - Temporary Permit - Continuing Education, p. 267, 904



(Board of Psychologists)

- 24-189-41 Fee Schedule - Psychologist Application Procedures - Examination - Temporary Permit - Behavior Analyst Experience and Supervision, p. 1272

(Board of Public Accountants)

- 24-201-53 Accounting and Auditing Experience Requirements - Granting of Examination Credit - Records - Basic Continuing Education Requirement - Credit for Service as Lecturer, Instructor, Technical Reviewer, Speaker, or Report Reviewer, p. 273, 792

(Board of Behavioral Health)

- 24-219-35 Application and Licensing Rules for Licensed Clinical Social Workers (LCSW), Licensed Baccalaureate Social Workers (LBSW), Licensed Master's Social Workers (LMSW), Licensed Clinical Professional Counselors (LCPC), Licensed Marriage and Family Therapists (LMFT), Licensed Addiction Counselors (LAC), and Certified Behavioral Health Peer Support Specialists (CBHPSS), p. 278, 1517

(Board of Veterinary Medicine)

- 24-225-41 Definitions - Patient Medical Records and Recordkeeping - Unprofessional Conduct - Continuing Education - Certified Euthanasia Technicians—License Requirements - Board-Approved Training Program Criteria - Certified Euthanasia Technician Examinations—Written and Practical - Application for Certified Euthanasia Agencies - Inspections—Initial and Annual - Continuing Education— Certified Euthanasia Technicians - Certified Euthanasia Agency Operation Standards - Change of Attorney-in-Fact - Closure of a Certified Euthanasia Agency or Loss of DEA Permit - Termination of Certified Euthanasia Technician Employment and Retirement of Certificate, p. 440, 1633

LIVESTOCK, Department of, Title 32

- 32-18-293 Recalls, p. 1468  
32-19-304 Importation of Restricted or Prohibited Alternative Livestock - Import Requirements for Cervids, p. 2307, 905  
32-20-307 Brands Enforcement Division Fees, p. 527, 912  
32-20-308 Label Review, p. 1278  
32-20-310 Designated Surveillance Area, p. 843, 1282  
32-20-311 Special Requirements for Poultry - Special Requirements for Alternative Livestock, p. 1472

(Board of Milk Control)

- 32-20-309 Dumped Milk Related to the COVID-19 Pandemic, p. 681

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- 36-22-203 Management of State Forested Lands, p. 1046  
36-22-206 Renewable Resource Grant and Loan and Reclamation Development  
Grant Application Deadlines Related to the COVID-19 Pandemic, p.  
685

(Board of Oil and Gas Conservation)

- 36-22-209 Privilege and License Tax, p. 1016

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- 37-902 Pools, Spas, and Other Water Features, p. 530, 913  
37-904 Child Care, p. 32, 687  
37-907 Montana Medical Marijuana Program, p. 170, 914  
37-908 Child Welfare Prevention and Support Services Contract Enrollment  
and Participation, p. 1087, 1528  
37-911 Updates for Targeted Case Management - Outpatient Therapy -  
Reference Revisions, p. 372, 691  
37-912 Child Support Enforcement Division Program Name Change, p. 533,  
966  
37-913 Substantiation of Abuse and Neglect Reports - Disclosure of  
Information, p. 1574, 1739  
37-914 Residency, p. 563, 925  
37-916 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules,  
and Effective Dates, p. 846, 1158  
37-917 Medicaid and Non-Medicaid Manual Updates, p. 856, 1161  
37-918 Home and Community Based Services for Adults With Severe and  
Disabling Mental Illness, p. 861, 1173  
37-919 Nursing Facility Reimbursement, p. 949, 1330  
37-920 Developmental Disabilities Program Services Manual Updates, p.  
1094, 1529  
37-921 Durable Medical Equipment Order and Record Requirement Update,  
p. 1098, 1530  
37-922 Healthy Montana Kids Dental Benefits, p. 1102, 1531  
37-923 Flavored Electronic Smoking Devices, p. 1105, 1637  
37-924 Limiting COVID-19 Exposure in Assisted Living Facilities, p. 1333  
37-925 Medicaid Rates and Services, p. 1476, 1740  
37-926 Graduate Medical Education Methodology Changes, p. 1481, 1742  
37-928 Home and Community-Based Services, p. 1486, 1707  
37-929 Low Income Energy Assistance Program (LIEAP), p. 1582  
37-930 Trauma Facility Designation, p.1591

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38-5-245 Small Generator Interconnection Definitions and Procedures, p. 651,  
955

REVENUE, Department of, Title 42

- 42-1014 Resort Areas, Determinations, and Licenses, p. 2322, 697
- 42-1017 Approval of a Licensee Without Premises - Concession Agreements, p. 462, 566, 772, 1177, 1283
- 42-1018 Tax Incentive for New or Expanding Industry, p. 388, 703
- 42-1019 Montana Economic Development Industry Advancement Act (MEDIAA), p. 473, 568, 774, 1638
- 42-1020 Alternative County Business Office Hours, p. 1115, 1648
- 42-1021 Forest Land Classification Requirements and Valuation, p. 1490, 1743
- 42-1022 State Liquor Warehouse Inventory Practices - Amendments to Bailment Limits - Revisions to Product Classification, p. 1506, 1745
- 42-1023 Classification and Valuation of Class Three Property (i.e., Agricultural Land), p. 1594

SECRETARY OF STATE, Office of, Title 44

- 44-2-238 Electronic Notary Stamps, p. 704, 1186
- 44-2-239 Extending the Deadline to Submit Annual Reports to the Secretary of State's Office for Corporations and Limited Liability Companies Doing Business in the State of Montana, p. 796
- 44-2-240 Scheduled Dates for the 2021 Montana Administrative Register, p. 1695

MONTANA ADMINISTRATIVE  
REGISTER

2020 ISSUE NO. 19  
OCTOBER 9, 2020  
PAGES 1786-1856

**COREY STAPLETON**  
SECRETARY OF STATE

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