

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-9009.

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BEFORE THE STATE BANKING BOARD
DEPARTMENT OF ADMINISTRATION
STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF PROPOSED REPEAL
2.60.401 pertaining to the closure or)
relocation of bank branches) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On February 27, 2021, the Department of Administration proposes to repeal the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on January 27, 2021, 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.

3. The department proposes to repeal the following rule:

2.60.401 ADOPTION OF FORM FOR NOTICE TO PUBLIC OF BANK
BRANCH CLOSURE OR RELOCATION

AUTH: 32-1-218, MCA
IMP: 32-1-202, 32-1-218, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to repeal this rule as the Notice to Public of Proposed Closure or Relocation of Bank Branch form dated August 1, 2016, has been replaced in a previous rulemaking. The department adopted new rule ARM 2.59.907 pertaining to the closure or relocation of bank branches on September 11, 2020. The new rule states that the bank shall give notice to its customers by using the Notice of Closure form or Notice of Relocation form, both dated June 29, 2020, as appropriate. Therefore, the form in ARM 2.60.401 is no longer necessary.

4. 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. Comments must be received no later than 5:00 p.m., February 12, 2021.

5. 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 4 above no later than 5:00 p.m., January 27, 2021.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 4 persons based on the 38 state-chartered banks.

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

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

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

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

By: /s/ Michael P. Manion
Michael P. Manion, Acting Director
Department of Administration

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

Certified to the Secretary of State January 5, 2021.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 23.13.102, 23.13.201,) PROPOSED AMENDMENT
23.13.215, 23.13.216, 23.13.301,)
23.13.304, and 23.13.703 pertaining)
to the certification of public safety)
officers)

TO: All Concerned Persons

1. On February 24, 2021, at 10:00 a.m., the Public Safety Officers Standards and Training (POST) Council will hold a telephonic public hearing via ZOOM meeting platform 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 by the novel coronavirus, COVID-19, there will be no in-person hearing. Interested parties may access the remote conferencing in the following ways:

- (a) Zoom meeting ID: 924 5297 1072
Passcode: vLC8CS
- (b) Phone number: 866-576-7975
Access code: 612394

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

2. The POST Council 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 POST Council no later than 4:00 p.m. on February 19, 2021, to advise us of the nature of the accommodation that you need. Please contact Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov.

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

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

(1) through (27) remain the same.

(28) "Voluntary surrender" means a public safety officer agrees to the revocation of the officer's certificate.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: ARM 23.13.703(9)(b) allows the executive director to accept the voluntary surrender of an officer's certification following the review and investigation of an allegation of officer misconduct. During communications regarding certificate sanctions in 2020, POST learned that officers and their representatives were unsure what constituted a voluntary surrender, namely whether a voluntary surrender was a simple relinquishment of a certificate or was an agreement not to challenge a certificate revocation. In light of this confusion, POST determined this amendment is reasonably necessary to specify what it means when an officer decides to voluntarily surrender a certificate. A voluntary surrender necessarily includes a waiver of any challenge to the certificate revocation. This definition comports with POST's practice of recording a voluntary surrender as a revocation in POST's database and in the National Decertification Index and the Integrity Report.

23.13.201 MINIMUM STANDARDS FOR THE APPOINTMENT AND CONTINUED EMPLOYMENT OF PUBLIC SAFETY OFFICERS (1) and (2) remain the same.

(3) Every public safety communications officer, as a part of the training required in (2)(k), must complete, every two calendar years, a telephone cardiopulmonary resuscitation (TCPR) course. The required TCPR training shall follow evidence-based, nationally recognized guidelines for high-quality TCPR that incorporate recognition protocols for out-of-hospital cardiac arrest (OHCA) and continuous education. The training must cover a minimum of the following topics:

- (a) anatomy and physiology of the circulatory and cardiovascular systems;
- (b) relationship between circulatory, respiratory, and nervous systems;
- (c) signs and symptoms of acute coronary syndrome (ACS);
- (d) signs of life recognition;
- (e) early recognition of the need for CPR;
- (f) agonal respirations;
- (g) hypoxic seizures and sudden cardiac arrest;
- (h) pathophysiology of sudden cardiac death/cardiac arrest;
- (i) the role of TCPR in cardiac arrest survival;
- (j) the importance of minimizing disruptions when TCPR is in progress;
- (k) physiology behind the performance of the instructions;
- (l) automated external defibrillators and the role they play in resuscitation;
- (m) explanation, with practical training exercises, for different TCPR instructions, including: adult, child, infant, neonate, pregnant patients, obese patients, and stoma patients;
- (n) critical incident stress management; and
- (o) unusual circumstances posing challenges to the delivery of TCPR instructions, such as: patients with do-not-resuscitate orders or physician orders for life-sustaining treatment, patients on ventilators, post-operation patients, patients obviously dead on arrival, electrocution, drowning, strangulation, two-rescuers ventilations, and cardiac arrest from trauma.

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

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: During the 2019 Legislative Session, POST was contacted by a representative of the American Heart Association regarding potential legislation requiring public safety communications officers to receive ongoing training on telephone cardiopulmonary resuscitation (TCPR). With TCPR training, public safety communications officers can assist untrained callers in providing CPR and can remind CPR trained callers how to provide high-quality CPR. In January 2020, the Business Plan/Policy Committee of the POST Council determined that the desired effect of the legislation could be enacted through rulemaking. POST determined that this amendment is reasonably necessary to improve the services provided for the safety and wellbeing of the citizens of Montana. The training topics set forth in the rule are in line with training requirements in other states.

23.13.215 FIREARMS PROFICIENCY STANDARDS (1) remains the same.

(2) The minimum standards for annual firearms proficiency are:

(a) Primary duty Handgun – a minimum of 30 rounds, fired at ranges from point-blank to 15 yards with a minimum of 15 rounds at or beyond seven yards;

(b) through (d) remain the same.

(e) Fully automatic weapon – a minimum of 30 rounds fired at a distance ranging from point-blank to ten yards, with a minimum of 25 rounds fired in full automatic (short bursts of two or three rounds), and a minimum of five rounds fired semi-automatic; and

(f) Secondary or backup handgun – a minimum of 12 rounds fired at a distance ranging from point blank to at or beyond seven yards, which includes a minimum of six rounds fired at or beyond seven yards.

AUTH: 2-15-2029, MCA
IMP: 7-32-303, 44-4-403, MCA

REASON: Many public safety officers carry a secondary or backup handgun in case they are unable to access or use their primary handgun. Often, the backup firearm has a smaller capacity than the primary firearm and is intended for use at a shorter distance. In February 2020, a deputy contacted POST regarding the difficulty officers face meeting the firearms proficiency standards on their backup handguns given these differences. POST has determined that it is unreasonable for officers to be subject to the same firearms proficiency standards for their backup and primary handguns and that it is reasonably necessary to amend the rule to distinguish between primary and secondary handguns. POST further determined that the new standards will adequately protect the public while ensuring fair standards for deputies.

23.13.216 PUBLIC SAFETY OFFICER EMPLOYMENT, EDUCATION AND CERTIFICATION STANDARDS (1) Except as provided in (2), the basic and basic equivalency training standards for employment, education, and certification set forth in 7-32-303(5)(a), (b), and (c), MCA, are applicable to all public safety officers,

where an appropriate basic course or basic equivalency course exists in the public safety officer's field. The council may approve a location other than the Montana Law Enforcement Academy for the basic or basic equivalency courses in the following disciplines: detention/corrections officer; probation and parole officer; misdemeanor probation/pretrial services officer; public safety communications officer; and coroner.

(2) remains the same.

~~(3) The notification requirements set forth in 7-32-303(4), MCA apply to all public safety officers.~~ A public safety officer's employing authority must provide written notice to POST within 10 days of the appointment, termination, resignation, or death of the public safety officer.

AUTH: 2-15-2029, MCA
IMP: 7-32-303, 44-4-403, MCA

REASON: During the 2019 legislative session, the Legislature passed HB 98. This bill made significant changes to the wording and organization of 7-32-303, MCA. Due to the reorganization of the statute, many subsection numbers changed. During a February 2020 Business Plan/Policy Committee meeting, the committee determined that these changes are reasonably necessary to align the rule with the statute. An additional change from HB 98 requires peace officers to receive their basic training at the Montana Law Enforcement Academy. These amendments clarify which public safety disciplines may attend a basic academy at another location.

Given the possibility of future revisions to 7-32-303, MCA, which could involve renumbering the subsections, POST determined that the amendment to (3) is reasonably necessary to eliminate the statutory reference so that POST does not have to update its rules every time the statute's numbering changes.

23.13.301 QUALIFICATIONS FOR APPROVAL OF PUBLIC SAFETY OFFICER TRAINING COURSES (1) and (2) remain the same.

(3) A POST-certified instructor seeking course credit for public safety officers must have an active POST certificate that is not revoked, suspended, or on probation and must submit an application for accreditation to the director and retain documentation of:

(a) through (5) remain the same.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: As part of a periodic review of the administrative rules, staff realized that a public safety officer with a revoked certificate would be eligible to instruct for POST course credit, while a public safety officer with a lesser sanction, such as a suspended certificate or one on probation, could not. This was an oversight. POST determined it is reasonably necessary to amend this rule to provide consistency so that an officer with a revoked certificate is treated like other sanctioned officers.

23.13.304 THE BASIC COURSES (1) through (3) remain the same.

(4) The council may approve changes from the course content established at the last review upon written application from the MLEA administrator, training agency, or training provider providing evidence that such change is compatible with the public interest.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: In March 2020, POST amended its rules to allow for the certification of misdemeanor probation/pretrial services officers. The MLEA conducted the first basic course for the new discipline but indicated that it would not have capacity to conduct the training on a regular basis. Dawson County Community College submitted proposals to provide this vital training to public safety officers in Montana. The council approved this proposal. In addition, the Department of Corrections has historically provided the probation and parole basic academy. Because the MLEA does not provide the training in these disciplines, the council determined that any training agency or provider would be the appropriate entity to apply to make changes to a course. This amendment is therefore reasonably necessary to facilitate standard processes among training providers.

23.13.703 PROCEDURE FOR MAKING AND RECEIVING ALLEGATIONS OF OFFICER MISCONDUCT AND FOR INFORMAL RESOLUTION OF THOSE ALLEGATIONS BY THE DIRECTOR (1) through (3) remain the same.

(4) Within 30 days of being notified of the allegation, or in making its own allegation of misconduct, the employing authority must give POST a notice of the employing authority's investigation, action, ruling, finding, or response to the allegation, in writing, which must include a description of any remedial or disciplinary action pending or already taken against the officer regarding the allegation in question, and which may contain a recommendation from the employing authority regarding whether POST should impose a sanction. If the employing authority recommends POST impose a sanction, the employing authority must state what sanction the employing authority deems reasonable. POST shall consider but is not bound by the recommendation of the employing authority. If available, a copy of the initial allegation made to the employing authority and the employing authority's written response must be forwarded to the director. The employing authority may make a written request to the director for additional time to respond. Such a request must provide good cause as to the reason more time is required. The director may grant or deny requests for additional time at the director's discretion.

(5) through (9)(c)(i) remain the same.

(ii) Not sustained: The investigation failed to discover sufficient evidence to prove or disprove the allegations ~~made or the investigation conclusively proved that the act or acts complained of did not occur.~~

(iii) Sustained: The investigation disclosed a preponderance of evidence to prove the allegation(s) ~~made.~~

(iv) Unfounded: The investigation disclosed that the complainant made a false allegation, the subject of the complaint was not involved in the incident, or the incident did not occur.

(v) Exonerated: The investigation disclosed that the incident occurred, but the subject of the complaint acted lawfully and in a manner consistent with the agency's policy and procedures.

(d) through (11) remain the same.

AUTH: 2-4-201, 2-15-2029, MCA

IMP: 2-4-201, 2-15-2029, 44-4-403, MCA

REASON: In March 2020, POST amended this rule to allow an employing authority to make a recommendation regarding the action POST takes on an officer's certification. POST did not intend to require an employing authority to make a recommendation. Since March 2020, officers accused of misconduct have argued that POST may not act on their certification without a recommendation from the employing authority. In light of this confusion, the council has determined that this rule change is necessary to make clear that any recommendation is optional.

In March 2020, POST also amended ARM 23.13.702 regarding the types of conduct that POST finds unacceptable for public safety officers and that employing authorities must report to POST. Since then, POST has identified additional possible findings the executive director could make following the review and investigation of an allegation. The amendments to (9) are reasonably necessary to reflect those additional findings and to provide clarity to officers, employing authorities, and the citizens of Montana regarding what an investigation discloses and the disposition of any given allegation.

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: Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov, and must be received no later than 5:00 p.m., March 12, 2021.

5. Lewis K. Smith, III, Attorney at Law, has been designated to preside over and conduct this hearing.

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

7. An electronic copy of this proposal notice is available through the Secretary of State's website at <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 rules will not significantly and directly impact small businesses.

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

Sheriff Tony Harbaugh, Chairman
Public Safety Officers Standards and
Training Council

By: /s/ Perry Johnson
Perry Johnson
Executive Director

Certified to the Secretary of State January 5, 2021.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.29.221 pertaining to use of) PROPOSED AMENDMENT
signatures when documents are being)
electronically transmitted)

TO: All Concerned Persons

1. On February 17, 2021, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the novel coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- (a) Join Zoom Meeting, <https://mt-gov.zoom.us/j/98264309140>, Meeting ID: 982 6430 9140; or
- (b) Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 982 6430 9140.

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

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on February 10, 2021, to advise us of the nature of the accommodation that you need. Please contact Cindy Zimmerman, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011; telephone (406) 444-1752; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail cindy.zimmerman@mt.gov.

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

24.29.221 USE OF SIGNATURES WHEN DOCUMENTS ARE BEING ELECTRONICALLY TRANSMITTED ~~(1) The department may accept signatures in an electronically reproduced format on claims filing forms and petitions for settlement. The document must bear an original, manual signature, but it may be transmitted to the department electronically. The document may be transmitted to the department by means of:~~

- ~~(a) a fax copy;~~
- ~~(b) a portable document format (.pdf copy), transmitted electronically;~~
- ~~(c) an electronic scan, transmitted electronically; or~~
- ~~(d) a photocopy.~~

(1) For purposes of Title 39, chapter 71, MCA, except those which require a signature under oath, the department accepts electronic signatures as follows:

(a) an electronic scan or photocopy of a manual signature for documents transmitted to the department by fax or attached to electronic mail or File Transfer Service in portable document format; or

(b) a signature properly authenticated and verified by an electronic signature for which appropriate auditable records are available. Audit reports or records supporting the signature must be produced to the department upon request.

~~(2) The department may, in its sole discretion, accept appropriately authenticated digital signatures on documents, except as provided in (4).~~

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

~~(4) Electronically reproduced signatures are not accepted by the department for independent contractor exemption certificate applications or waivers, in order to ensure that all such signatures are genuine and made under oath as provided by law.~~

AUTH: 39-71-203, MCA

IMP: 39-71-203, 39-71-717, MCA

REASON: Reasonable necessity exists to amend this rule to facilitate the further utilization of electronic signature tools. The department has accepted some electronic signatures since initial adoption of this rule. However, due to the nature of current working environments further expansion of the rule will permit parties to take advantage of electronic tools available. Subsection (1)(b) is expressly intended to permit the use of such services as DocuSign, RightSignature, similarly auditable proprietary software, and the like. Requirements of audit records are satisfied by the submission of completion certificates, signature certificates, and similar, which support the appropriate authentication and verification of signatures.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Cindy Zimmerman, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011; or e-mail cindy.zimmerman@mt.gov, and must be received no later than 5:00 p.m., February 26, 2021.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Laura Ducolon, P.O. Box 1728, Helena, Montana 59624-1728 or e-mailed to laura.ducolon@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

6. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of

Events, Administrative Rules Hearings Section. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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

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

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

/s/ Quinlan L. O'Connor
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ Laurie Esau
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 5, 2021.

BEFORE THE BOARD OF ATHLETIC TRAINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.118.301 definitions, 24.118.2301) PROPOSED AMENDMENT AND
unprofessional conduct, and the repeal) REPEAL
of 24.118.501 applications, 24.118.504)
supervision, 24.118.2101 renewals)

TO: All Concerned Persons

1. On February 11, 2021, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal 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/94405871805>, Meeting ID: 944 0587 1805, Passcode: 266047; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 944 0587 1805, Passcode: 266047.

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 Board of Athletic Trainers no later than 5:00 p.m., on February 4, 2021, to advise us of the nature of the accommodation that you need. Please contact Kevin Bragg, Board of Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdatr@mt.gov (board's e-mail).

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

24.118.301 DEFINITIONS (1) In addition to the terms defined in 37-36-101, MCA, the following definitions apply to the rules in this chapter:

(a) "Board of Certification" means the Board of Certification, Inc. (BOC), the only accredited, certifying body accepted by the Board of Athletic Trainers, and which sets the standards of practice of athletic training.

(b) "CAATE Standards" means the Standards for Accreditation of Professional Athletic Training Programs promulgated by the Commission on Accreditation of Athletic Training Education (CAATE).

(c) "Qualified supervisor" means a licensed athletic trainer or a health care professional licensed under Title 37, chapter 3, 6, 11, 12, 20, 24, or 26, MCA, who:

(i) is a preceptor at an institution accredited by the BOC and using CAATE Standards; and

(ii) is not currently enrolled in an entry-level athletic training education program.

~~(a) "Approved clinical instructor" means a BOC certified athletic trainer, licensed physician, or other individual credentialed in a health care profession, for no less than one year and:~~

~~(i) who is not currently enrolled in the entry level athletic training education program at the instructor's institution; and~~

~~(ii) whose training curriculum follows the standards of the Commission on Accreditation of Athletic Training Education (CAATE), July 1, 2012 edition, which are adopted and incorporated by reference. A copy of the CAATE standards may be obtained through the Board of Athletic Trainers, 301 S. Park Avenue, P.O. Box 200513, Helena, Montana, 59620-0513.~~

~~(b) "Board of Certification" means the Board of Certification, Inc. (BOC), the only accredited, certifying body accepted by the Board of Athletic Trainers, and which sets the standards of practice of athletic training.~~

~~(c) "Clinical instructor" means an individual credentialed in a health care profession for no less than one year, who may supervise students during clinical and/or field experiences, and who is not currently enrolled in the entry level athletic training education program at the instructor's institution. An individual credentialed in a health care profession for less than one year may serve as a clinical instructor if the instructor's institution has developed, documented, and implemented a plan for supervision of that instructor by an experienced, credentialed clinical instructor that ensures the quality of instruction provided to athletic training students.~~

~~(d) "Clinical instructor educator" means a clinical instructor educator as defined by the CAATE standards, July 1, 2012 edition, which are adopted and incorporated by reference. A copy of the CAATE standards may be obtained through the Board of Athletic Trainers, 301 S. Park Avenue, P.O. Box 200513, Helena, Montana, 59620-0513. A clinical instructor educator must also:~~

~~(i) have been recognized and designated by the institution as the clinical instructor educator for the individual's institution;~~

~~(ii) have been BOC credentialed for no less than three years;~~

~~(iii) have been designated and authorized by the institution to oversee approved clinical instructor training;~~

~~(iv) be knowledgeable in the content areas required for the training of approved clinical instructors; and~~

~~(v) if more than one individual is designated as the clinical instructor educator for the institution, then at least one of those individuals must be a BOC credentialed athletic trainer.~~

~~(e) "Graduate assistant" means a person who has graduated from a postsecondary institution with a baccalaureate degree, and has taken and passed~~

the BOC's examination, and who is in the process of attaining a higher level of education.

~~(f) "Health care professional" means a licensed athletic trainer, chiropractor, naturopathic physician, nurse, nurse practitioner, occupational therapist, physical therapist, physician, physician's assistant, or podiatrist as defined in Title 37, chapters 3, 6, 8, 11, 12, 20, 24, 26, or 36, MCA.~~

~~(g) "Student assistant or athletic training student" means an intern or undergraduate currently enrolled in an accredited athletic training curriculum, in an undergraduate or graduate program at a postsecondary institution. An intern or student trainee may be called by the title "student assistant" or "athletic training student."~~

AUTH: 37-36-102, MCA

IMP: 37-36-101, 37-36-203, MCA

REASON: Following an in-depth staff review of the board's rules and statutes, the board determined it is reasonably necessary to amend this rule throughout by striking unnecessary terms and rewording others for clarity and current industry standards and use.

The board is replacing (1)(b) with new (1)(a). The board is redefining CAATE at (1)(b) from previous (1)(a) and (d) to accommodate the use of the term in (1)(c). Additionally, it is reasonably necessary to strike the definition of "clinical instructor" as the term is now included in the definition of "qualified supervisor" in (1)(c).

The board is striking (1)(f) as it unnecessarily repeats statutory definitions in Title 37 of the Montana Code Annotated.

Additionally, the board is eliminating (1)(g) because student assistants are defined in BOC standards.

The board is striking (1)(a), (d), and (e) as the terms are only used in the supervision rule, ARM 24.118.504, which is being repealed in this notice.

24.118.2301 UNPROFESSIONAL CONDUCT (1) The BOC's Athletic Trainers Standards of Professional Practice, implemented January ~~2018~~ 2019, are adopted and incorporated by reference. A copy of the BOC Standards of Professional Practice may be obtained through the Board of Athletic Trainers, 301 S. Park Avenue, P.O. Box 200513, Helena, Montana, 59620-0513. Violation of BOC practice standards or codes of professional responsibility may be grounds for discipline.

~~(2) Licensees may be subject to discipline for those forms of unprofessional conduct defined in 37-1-316, MCA.~~

~~(3)~~ (2) The In addition to 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 36, MCA, and may be grounds for discipline:

~~(a) exploiting a professional relationship with the patient for personal or financial gain;~~

~~(b) using a false, fraudulent, or deceptive statement in any document connected with the practice of athletic training;~~

~~(c) having been subject to disciplinary action of another state or jurisdiction, including the BOC, against a license or other authorization to practice athletic training based upon acts or conduct by the licensee, similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 36, MCA, or these rules; a certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;~~

~~(a) having been subject to disciplinary action by the BOC;~~

~~(d) through (f) remain the same but are renumbered (b) through (d).~~

~~(g) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim or other unprofessional conduct;~~

~~(e) failing to report to the board office within 30 days of the date of the final judgment, order, or agency action, any malpractice, professional misconduct, criminal, or disciplinary action in which the licensee is a named party;~~

~~(h) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;~~

~~(i) abusive billing practices;~~

~~(j) making promises of athletic prowess or ability as a result of athletic training;~~

~~(k) through (o) remain the same but are renumbered (f) through (j).~~

~~(p) (k) failing to transfer pertinent and necessary medical records to another licensed health care provider professional, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative;~~

~~(q) remains the same but is renumbered (l).~~

~~(r) (m) failing to disclose having voluntarily relinquished or surrendered a license or privileges, or having withdrawn an application for licensure or privileges while under investigation, or prior to the granting or denial of an application in this state or in another state or jurisdiction; or~~

~~(s) (n) failing to maintain current BOC certification as required by statute, including adhering to and complying with all BOC continuing education requirements, and obtaining and carrying the proscribed professional liability insurance as required by BOC for certified athletic trainers; or~~

~~(t) any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.~~

AUTH: 37-1-319, 37-36-102, MCA

IMP: 37-1-316, 37-1-319, 37-36-202, MCA

REASON: Following an in-depth review, board legal counsel recommended several amendments to this rule to ensure no unnecessary duplication with 37-1-316, MCA, the unprofessional conduct statute. The board determined it is reasonably necessary to update this rule to remove duplication with statute, simplify and streamline the rule for ease of use and readability, and more clearly set forth the actions considered by the board as unprofessional conduct.

The board is also amending (1) to update to the 2019 edition of the BOC standards of professional practice, which is incorporated by reference.

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

24.118.501 APPLICATIONS

AUTH: 37-1-131, 37-36-102, MCA

IMP: 37-1-131, 37-36-201, MCA

REASON: During an internal review of existing board rules and division procedures, staff determined that the board-specific rules restate the division's standardized procedures. The board is repealing this rule because the department administers a standardized application process for all professional and occupational licensure boards and programs, and it is not necessary to repeat the procedural provisions in this board rule. The repeal will not alter statutory requirements.

24.118.504 SUPERVISION

AUTH: 37-1-131, 37-36-102, MCA

IMP: 37-1-131, 37-36-101, 37-36-203, MCA

REASON: The board determined it is reasonably necessary to repeal this rule to align with proposed changes to the definitions rule, ARM 24.118.301 which will accomplish the objectives of this rule. Repealing this rule in its entirety will improve clarity and readability in the board's rules.

24.118.2101 RENEWALS

AUTH: 37-1-131, 37-36-102, MCA

IMP: 37-1-131, 37-1-141, 37-1-309, 37-36-202, MCA

REASON: During an internal review of existing board rules and division procedures, staff determined that the board-specific rules restate the division's standardized procedures. The board is repealing this rule because the department administers a standardized renewal process for all professional and occupational licensure boards and programs, and it is not necessary to repeat the procedural provisions in this board rule. The repeal will not alter statutory requirements, nor will it hinder the board's ability to conduct its certification duties.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdatr@mt.gov, and must be received no later than 5:00 p.m., February 12, 2021.

6. An electronic copy of this notice of public hearing is available at <http://athletictrainer.mt.gov/> (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons

should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

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

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.118.301 and 24.118.2301 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.118.501, 24.118.504, and 24.118.2101 will not significantly and directly impact small businesses.

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

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

BOARD OF ATHLETIC TRAINERS
JANET TRETHERWEY, CHAIRPERSON

/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 December 31, 2020.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.122.401 fee schedule for)	PROPOSED AMENDMENT AND
boiler operating engineers,)	REPEAL
24.122.405 approval of training)	
courses, 24.122.510 examinations,)	
and the repeal of 24.122.515)	
renewals, pertaining to boiler operator)	
licensing)	

TO: All Concerned Persons

1. On February 11, 2021, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal 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/92728672482>, Meeting ID: 927 2867 2482, Passcode: 051763; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 927 2867 2482, Passcode: 051763.

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 February 4, 2021, to advise us of the nature of the accommodation that you need. Please contact Carrie Baker, Boiler Operators License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or cbaker@mt.gov.

3. GENERAL REASONABLE NECESSITY STATEMENT: Following a January 2020 internal transfer of the Boiler Operators License Program (program) from the Building Codes Program to the Professional Licensing Bureau, department staff performed an in-depth review of the program's statutes and administrative rules. The department determined it is reasonably necessary to amend several program rules at this time to align with and gain efficiencies from standardized department procedures, remove conflicts between statutes and the implemented rules, and streamline the rules for better organization and ease of use for the reader.

Where a more specific reason for a proposed amendment exists, the department will identify those reasons immediately following that rule.

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

24.122.401 FEE SCHEDULE FOR BOILER OPERATING ENGINEERS

(1) Initial application, including examination for all classes of licensure:

(a) First class engineer license	\$100 <u>70</u>
(b) Second class engineer license	100
(c) Third class engineer license	80
(d) Agriculture class engineer license	50
(e) Low pressure engineer license	60
(f) Traction engineer license	50

(2) through (5) remain the same.

AUTH: 37-1-134, 50-74-101, MCA

IMP: 37-1-101, 37-1-134, 37-1-141, 50-74-320, MCA

REASON: Because the application procedure is standardized, there is no reason to assess different fees for the various boiler operating engineer license classes. Further, the department has determined through fee modeling that having a standard fee, and in some cases a reduced fee for higher classes of licensure is a positive aspect for stakeholders. The department is amending this rule to establish a single application fee for all classes of boiler operating engineers. These changes will affect approximately 254 applicants and result in a negligible change to annual revenue.

24.122.405 APPROVAL OF TRAINING COURSES (1) Any person or entity wishing to conduct a training course, approved by the department as acceptable for fulfilling educational requirements for boiler operator engineer licensure established in 50-74-304, MCA, shall apply for approval on forms provided by the department.

(2) remains the same.

(3) Training course providers shall receive department approval prior to offering courses. Applications for approval of a training course must include the following:

(a) through (e) remain the same.

(f) ~~a copy of the instructor's boiler operating engineer's license or other~~ documentation acceptable to the department, which outlines the instructor qualifications to teach the course.

(i) through (5) remain the same.

AUTH: 50-74-101, MCA

IMP: 50-74-304, MCA

REASON: The department is amending (3)(f) to no longer require applicants submit a copy of the instructor's boiler operating engineer's license since staff can simply access the license information in the database.

~~24.122.510 EXAMINATIONS (1) Examinations to determine the fitness and competence of applicants will be conducted in Helena, Montana at not less than three month intervals. At the department's discretion, additional examinations may be conducted based on the number of approved applicants waiting for examination.~~

~~(2) (1) The department may conduct examinations in other accept third-party testing locations and accept examination results from third-party agencies if authorized by the department.~~

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

~~(6) An applicant who fails to appear and take the first examination for which the applicant is scheduled may have the examination fee apply toward the next scheduled examination. However, if the applicant fails to appear and take the next scheduled examination, the fee is forfeited and any application for a subsequent examination requires an additional examination retake fee.~~

AUTH: 50-74-101, MCA

IMP: 50-74-302, 50-74-306, 50-74-311, 50-74-320, MCA

REASON: The department is amending this rule to provide greater flexibility in license testing locations beyond just Helena four times a year. The department already allows test proctoring at State Job Service locations but concluded it is reasonable to further expand testing locations to allow third-party locations such as colleges and universities.

The department does not require that applicants forfeit their exam fees if they fail to appear to sit for an exam. The department determined doing so is unnecessarily burdensome and is striking (6).

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

24.122.515 RENEWALS

AUTH: 37-1-141, 50-74-101, MCA

IMP: 37-1-141, 50-74-313, MCA

REASON: The department is repealing this rule because the department administers a standardized renewal process for all professional and occupational licensure boards and programs, and it is not necessary to repeat the procedural provisions in this program rule.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Boiler Operators License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-

mail to cbaker@mt.gov, and must be received no later than 5:00 p.m., February 12, 2021.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. 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 program 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 Boiler Operators License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to cbaker@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

10. Regarding the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.122.401, 24.122.405, and 24.122.510 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the department has determined that the repeal of ARM 24.122.515 will not significantly and directly impact small businesses.

Documentation of the department's above-stated determinations is available upon request to the Boiler Operators License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; facsimile (406) 841-2305; or to cbaker@mt.gov.

11. Carrie Baker, Program Manager, 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 December 30, 2020.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.131.402, 24.131.405,)
24.131.410, and 24.131.501)
pertaining to fees, training programs,)
variances, and requirements for)
construction blaster licensing)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On February 11, 2021, at 10:00 a.m., a public hearing will be held 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, <https://mt-gov.zoom.us/j/92728672482>, Meeting ID: 927 2867 2482, Passcode: 051763; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 927 2867 2482, Passcode: 051763.

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 February 4, 2021, to advise us of the nature of the accommodation that you need. Please contact Carrie Baker, Construction Blaster License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or e-mail cbaker@mt.gov.

3. GENERAL REASON: Following a January 2020 internal transfer of the Construction Blaster License Program (program) from the Building Codes Program to the Professional Licensing Bureau, department staff performed an in-depth review of the program's statutes and administrative rules. The department determined it is reasonably necessary to amend several program rules at this time to align with and gain efficiencies from standardized department procedures, remove conflicts between statutes and the implemented rules, and streamline the rules for better organization and ease of use for the reader. Where a more specific reason for a proposed amendment exists, the department will identify those reasons immediately following that 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 rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.131.402 FEES (1) The following fees must be paid to the bureau and are nonrefundable:

(a) application fee	\$ 35 <u>75</u>
(b) examination fee	25
(c) license fee	40
(d) remains the same but is renumbered (b).	
(e) reexamination fee	35
(2) remains the same.	

AUTH: 37-1-134, 37-72-202, MCA

IMP: 37-1-134, 37-1-141, 37-72-202, MCA

REASON: During the statute and administrative rule review, staff noted that 37-72-301, MCA, the general qualifications statute, does not require an examination for construction blaster licensure. Further, the department does not have a licensure examination to provide. The department determined it is reasonably necessary to strike the examination and reexamination fees from this rule. Because the department has never administered nor charged for an exam, the elimination of the fees will not impact the program's annual revenue.

The department is also amending this rule to combine the separate application and license fees into a single application fee. The total cost for a license is not changing and this approach is consistent with the other department licensing programs and boards.

24.131.405 TRAINING PROGRAMS (1) Training programs in construction blasting must be recognized by the explosives and construction industry and approved by the bureau. The training program must offer comprehensive instruction in safe use of explosives, methods and purposes of their use, and safety procedures for storage. These training programs shall be at least 24 hours to obtain a ~~Class 1, Class 2, or Class 3~~ license, and ~~eight hours to obtain a Class 4~~ license, or be approved by the bureau based on content and quality of the course.

(2) The Construction Blasters Program maintains a list of approved training courses which can be obtained by contacting the Construction Blasters Program at 301 South Park, P.O. Box 200513, Helena, MT 59620-0513, or e-mail ~~dlibsdla@mt.gov~~ dlibsdhelp@mt.gov.

(3) remains the same.

AUTH: 37-72-202, MCA

IMP: 37-72-202, 37-72-302, MCA

REASON: The construction blaster licensing statutes originally provided for several licensure classes. Several years ago, staff discovered that while the statutes had been changed to only a single construction blaster license type, the administrative rules had not been adjusted. While the department has issued only the single license for years, it is reasonably necessary to amend this rule to align with the statutes and licensure processes.

The department is amending (2) to correct the program's contact e-mail address.

24.131.410 VARIANCES (1) A variance request must be as follows:

~~(a) The request must be on an a department-provided affidavit of completed by a licensed construction blaster who is an employee of the state of Montana or one of its political subdivisions and is requesting a variance for public work.~~

~~(b) The request must show that compliance with specific rules concerning the use of explosives would be impractical.~~

~~(c) The request must show the specific method to be utilized regarding the use of explosives and that this method will not constitute a danger to property or public safety.~~

(2) A variance will be granted or denied by letter in writing to the requestor for variance after a determination is made by the bureau based on (1) above. If the variance is approved, restrictions and time of variance must be stated if applicable; and if denied, reasons for denial must be stated. The letter must be signed by the bureau chief or his the bureau chief's designated representative.

~~(3) A variance request from a licensed construction blaster who is not an employee of the state of Montana or one of its political subdivisions requesting a variance for public work must be directed to the Occupational Safety and Health Administration for processing.~~

AUTH: 37-72-201, 37-72-202, MCA

IMP: 37-72-201, MCA

REASON: The implemented statute, 37-72-201, MCA, does not limit variances to only public works projects as requested by construction blasters employed by the state of Montana. It is reasonably necessary to amend this rule to align with the statutory provisions.

The department is striking (1)(b) and (c) as unnecessarily duplicating the statutory language of 37-72-201, MCA.

24.131.501 CONSTRUCTION BLASTER LICENSE REQUIREMENTS

(1) remains the same.

~~(2) The following construction blasters' licenses are issued:~~

~~(a) Class 1— construction — blasting for all types of construction except demolition (see Class 3).~~

~~(b) Class 2 — construction — restricted blasting for construction with blast designs up to millisecond delay systems and single initiation source.~~

~~(c) Class 3 — demolition — blasting for reducing, destroying or weakening any residential, commercial or other building or structure.~~

~~(d) Class 4 utility blasting not exceeding ten pounds of explosives and generally limited to single hole, single shot applications.~~

~~(3) (2)~~ The bureau shall issue a construction blaster's license to each applicant who:

(a) and (b) remain the same.

(c) has successfully completed a training program approved by the bureau in accordance with ARM 24.131.405; and

~~(d) has two year's years' field experience in construction blasting; and~~

~~(e) achieves a grade of 80 percent or higher on an examination administered by the bureau based upon the adopted standards and regulations regarding the use of explosives.~~

~~(4) (3)~~ Construction blasters' licenses are not transferable and must be renewed on or before the date set by ARM 24.101.413. The provisions of ARM 24.101.408 and 24.101.414 apply.

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

AUTH: 37-1-141, ~~37-72-201~~, 37-72-202, MCA

IMP: ~~37-1-134~~, 37-1-141, 37-72-301, 37-72-302, 37-72-304, 37-72-305, MCA

REASON: See REASONS for ARM 24.131.402 and 24.131.405. The department is amending (3) to delete a reference to a repealed rule.

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 Construction Blaster License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to cbaker@mt.gov, and must be received no later than 5:00 p.m., February 12, 2021.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. 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 program 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 Construction Blaster License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-

2305; e-mailed to cbaker@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 24.131.402, 24.131.405, 24.131.410, and 24.131.501 will not significantly and directly impact small businesses.

Documentation of the department's above-stated determination is available upon request to the Construction Blaster License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; facsimile (406) 841-2305; or to cbaker@mt.gov.

10. Carrie Baker, Program Manager, 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 December 30, 2020.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.135.301, 24.135.402,) PROPOSED AMENDMENT
24.135.411, 24.135.501, 24.135.516,)
and 24.135.530 pertaining to fees,)
incorporation by reference of American)
National Standards Institute B30.5, and)
license requirements for crane and)
hoisting operating engineers)

TO: All Concerned Persons

1. On February 11, 2021, at 10:00 a.m., a public hearing will be held 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, <https://mt-gov.zoom.us/j/92728672482>, Meeting ID: 927 2867 2482, Passcode: 051763; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 927 2867 2482, Passcode: 051763.

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 February 4, 2021, to advise us of the nature of the accommodation that you need. Please contact Carrie Baker, Crane and Hoisting Operator License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or e-mail cbaker@mt.gov.

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

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

- (1) "Bureau" means the ~~business and occupational~~ professional licensing bureau of the Department of Labor and Industry.
- (2) through (7) remain the same.

AUTH: 50-76-112, MCA
IMP: 50-76-101, 50-76-102, 50-76-103, MCA

REASON: The department is amending (1) to reflect the correct name of the professional licensing bureau.

24.135.402 FEE SCHEDULE (1) remains the same.
(2) Annual renewal of license (First and Second Class) 80 150
(3) through (6) remain the same.

AUTH: ~~37-1-134~~, 50-76-104, 50-76-112, MCA
IMP: 50-76-104, MCA

REASON: The department determined it is reasonably necessary to increase renewal fees for all first and second-class license types to comply with the provisions of 37-1-134, MCA, and keep the program's fees at a level that provides the amount of money usually needed for the operation of the program for services. In providing administrative services to the program, the department has determined that unless the fees are increased as proposed, the program's already existing shortfall of operating funds will continue to increase through the end of the current fiscal year and into future fiscal years. Under the current fee structure, the program will not have sufficient revenue in FY21 to even cover regular FY21 operating expenses. The department estimates that approximately 1417 persons will be affected by the proposed fee changes, resulting in a \$99,190 increase in annual revenue. The program last revised fees in 2006.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.135.411 INCORPORATION BY REFERENCE OF AMERICAN NATIONAL STANDARDS INSTITUTE B30.5 (1) The Department of Labor and Industry adopts and incorporates by reference the following sections of the American National Standards Institute (ANSI) B30.5, ~~2004~~ 2018 Edition which sets forth standards for mobile and locomotive cranes:

- (a) and (b) remain the same.
 - (c) Section 5-3.1.3 Conduct of Operators Responsibilities;
 - (d) and (e) remain the same.
 - (f) Section 5-3.4.5 Operating Near Crane Operation in the Vicinity of Electric Power Lines.
- (2) and (3) remain the same.
(4) A copy of the ANSI B30.5 can be purchased directly from ANSI, ~~1819 L Street NW, Suite 600, Washington, D.C. 20036~~ at www.ansi.org.

AUTH: 50-76-110, 50-76-112, MCA
IMP: ~~50-76-109~~, 50-76-110, MCA

REASON: The department is amending this rule to adopt and incorporate the most current 2018 edition of the American National Standards Institute (ANSI) B30.5, which sets forth standards for mobile and locomotive cranes. It is reasonably necessary to update to the contemporary standard to align with the training and certifications that applicants are receiving prior to licensure and operation. The department is also amending this rule to correctly name some sections that have been relabeled in the 2018 standard. The department is also providing the correct web address where the standards may be obtained.

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

24.135.501 HOISTING OPERATORS LICENSE REQUIREMENTS

(1) through (7)(a) remain the same.

(b) A report of physical examination filled out and signed by the physician, physician assistant, or advanced practice registered nurse having given the examination. The form is provided by the bureau. An alternate form may be used if approved by the bureau. The physical may not be dated more than 180 days from the date the application is received by the bureau.

(c) through (8) remain the same.

AUTH: 50-76-112, MCA

IMP: 50-76-102, 50-76-103, 50-76-104, MCA

REASON: The department recognizes that pursuant to Montana law and from submitted physicals that physicians are not the only qualified medical practitioners currently performing physical examinations. Therefore, it is reasonably necessary to amend this rule to also accept physical exams performed by physician assistants and advanced practice registered nurses and increase applicants' access to the required examinations.

24.135.516 CRANE HOISTING OPERATORS LICENSE REQUIREMENTS

(1) through (5) remain the same.

(6) A third-class crane ~~boiler's~~ oiler's license requires no experience or physical examination. A third-class crane license authorizes the holder to move truck cranes only.

(7) through (8)(a) remain the same.

(b) A report of physical examination filled out and signed by the physician, physician assistant, or advanced practice registered nurse having given the physical examination. The form is provided by the bureau upon request. An alternate form may be used if approved by the bureau. This physical examination form must also be filled out and submitted for license renewals.

(c) through (9) remain the same.

AUTH: 50-76-112, MCA

IMP: 50-76-103, 50-76-104, MCA

REASON: See REASON for ARM 24.135.501. The department is also amending (6) to reflect the correct license type.

24.135.530 MINE HOISTING OPERATORS LICENSE REQUIREMENTS

(1) through (10)(a) remain the same.

(b) A report of physical examination filled out and signed by the physician, physician assistant, or advanced practice registered nurse having given the examination. The form is provided by the bureau upon request. An alternate form may be used if approved by the bureau. The physical may not be dated more than 180 days from the date the application is received by the bureau.

(c) and (d) remain the same.

AUTH: 50-73-103, 50-76-112, MCA

IMP: 50-73-302, 50-76-102, 50-76-104, MCA

REASON: See REASON for ARM 24.135.501. Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Crane and Hoisting Operator License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to cbaker@mt.gov, and must be received no later than 5:00 p.m., February 12, 2021.

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

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. 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 program 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 Crane and Hoisting Operator License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to cbaker@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. Regarding the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.135.301, 24.135.402, 24.135.411, 24.135.501, 24.135.516, and 24.135.530 will not significantly and directly impact small businesses.

Documentation of the department's above-stated determination is available upon request to the Crane and Hoisting Operator License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; facsimile (406) 841-2305; or to cbaker@mt.gov.

9. Carrie Baker, Program Manager, 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 December 30, 2020.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.142.402 fee schedule,)	PROPOSED AMENDMENT AND
24.142.404 licensee responsibilities,)	REPEAL
24.142.502 elevator mechanic and)	
limited mechanic licensure)	
qualifications, 24.142.509)	
examinations, 24.142.510 licensure by)	
reciprocity or endorsement, and the)	
repeal of 24.142.405 apprentice)	
registration, pertaining to elevator)	
licensing)	

TO: All Concerned Persons

1. On February 11, 2021, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal 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/92728672482>, Meeting ID: 927 2867 2482, Passcode: 051763; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 927 2867 2482, Passcode: 051763.

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 February 4, 2021, to advise us of the nature of the accommodation that you need. Please contact Carrie Baker, Elevator License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or cbaker@mt.gov.

3. GENERAL REASON: Following a January 2020 internal transfer of the Elevator License Program (program) from the Building Codes Program to the Professional Licensing Bureau, department staff performed an in-depth review of the program's statutes and administrative rules. The department determined it is reasonably necessary to amend several program rules at this time to align with and gain efficiencies from standardized department procedures, remove conflicts

between statutes and the implemented rules, and streamline the rules for better organization and ease of use for the reader.

The department is amending several rules to remove provisions on registered apprentices since the program no longer administers apprenticeship standards and individual apprenticeship agreements. The department's Workforce Services Division, Registered Apprenticeship Program, is the registration agency approved by the U.S. Department of Labor, Office of Apprenticeship, to develop and administer apprenticeship standards for all apprenticeable occupations, sponsor qualifications, and individual apprentice agreements.

Where a more specific reason for a proposed amendment exists, the department will identify those reasons immediately following that rule.

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

<u>24.142.402 FEE SCHEDULE</u> (1) through (8) remain the same.	
(9) Apprentice registration	25
<u>(9) Reexamination fee</u>	<u>50</u>
(10) and (11) remain the same.	

AUTH: 37-1-101, 37-73-102, MCA

IMP: 17-2-302, 17-2-303, 37-1-101, 37-1-134, 37-73-102, 37-73-201, 37-73-204, 37-73-208, 37-73-212, 37-73-216, 37-73-221, MCA

REASON: The department is adding a reexamination fee at (9) to address confusion regarding whether a full application fee is required when taking a reexamination. The department estimates that approximately 2 persons will be affected by the proposed fee, resulting in a \$100 increase in annual revenue.

24.142.404 LICENSEE RESPONSIBILITIES (1) Licensed elevator mechanics, limited mechanics, elevator contractors, limited elevator contractors, and elevator inspectors shall have their licenses available on job sites at all times when employed in these capacities. ~~Elevator mechanic or limited mechanic apprentices shall have their registration card, issued by the department, on their persons at all times when so employed. Failure to comply with this provision may result in disciplinary action against the apprentice's supervising licensee.~~ As provided by 37-73-225, MCA, a licensed elevator mechanic and a limited elevator mechanic are subject to a fine for failure to produce proof of licensure upon request.

(2) through (6) remain the same.

AUTH: 37-73-102, MCA

IMP: 37-1-406, 37-1-410, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, 37-73-225, MCA

24.142.502 ELEVATOR MECHANIC AND LIMITED MECHANIC LICENSURE QUALIFICATIONS (1) remains the same.

~~(2) Elevator mechanic applicants who can under oath provide verifiable proof of employment as an elevator mechanic for at least three years prior to October 1, 2005, and who possess the requisite experience for licensure, may be licensed without examination upon payment of the application fee.~~

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

AUTH: 37-73-102, 37-73-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-203, 37-73-204, MCA

REASON: The department is striking (2) to remove outdated and unnecessary language that allowed mechanics having experience prior to the program's beginning to be licensed without examination.

24.142.509 EXAMINATIONS (1) remains the same.

(2) A person who has failed to pass any examination may, upon the payment of the appropriate reexamination fee, take the next scheduled examination. Failure of examination means receiving a test score below 70 percent. Applicants who fail the test a second time may not take the test again within a two-month period after the last failed exam.

(3) and (4) remain the same.

AUTH: 37-73-102, MCA

IMP: 37-73-102, 37-73-201, 37-73-204, MCA

REASON: The department is amending (2) to reflect the addition of the specific reexamination fee to ARM 24.142.402 in this notice.

24.142.510 LICENSURE BY RECIPROCITY OR ENDORSEMENT

(1) remains the same.

(2) Where no reciprocity agreement is applicable, mechanics licensed in other states may apply for licensure by endorsement in Montana. As used in this rule, "licensure by endorsement" means a formal reciprocal licensure agreement has not been signed with another specific state, but the qualifications for licensure in that state are ~~similar to or greater than~~ substantially equal to Montana's qualifications for the same level of licensure.

(3) The department may issue a license by endorsement to an applicant licensed in another state provided that the applicant is seeking a license comparable to the predicate license, and the applicant:

(a) submits a completed application with the required fees; and

(b) holds a comparable current, valid active license in good standing to practice in another state or jurisdiction;

~~(c) supplies a copy of the laws and rules in effect at the time of application to this state which shows that the standards in the other state are equivalent to or greater than the standards in effect in this state, as determined solely by the department; and~~

~~(d) provides official written or electronic verification directly from the other state(s) or jurisdiction(s) that the applicant's license is in good standing.~~

AUTH: 37-73-102, ~~50-60-203~~, MCA

IMP: 37-73-102, 37-73-201, 37-73-203, 37-73-204, MCA

REASON: The department determined it is reasonably necessary to amend (2) to reflect the same standard used in 37-73-204, MCA, authorizing licensure of persons licensed in other states.

Section (3)(b) is amended to specify that the comparable out-of-state license must be active and in good standing to align with the standardized department licensure procedures. The department is striking (3)(c) and (d) as department licensure staff verifies this information and it is no longer necessary for applicants to submit these documents.

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

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

24.142.405 APPRENTICE REGISTRATION

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-202, MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Elevator License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to cbaker@mt.gov, and must be received no later than 5:00 p.m., February 12, 2021.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. 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 program 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 Elevator License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to cbaker@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

10. Regarding the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.142.402, 24.142.404, 24.142.502, 24.142.509, and 24.142.510 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the department has determined that the repeal of ARM 24.142.405 will not significantly and directly impact small businesses.

Documentation of the department's above-stated determinations is available upon request to the Elevator License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; facsimile (406) 841-2305; or to cbaker@mt.gov.

11. Carrie Baker, Program Manager, 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 December 30, 2020.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.144.301 definitions,)
24.144.402 duty to report changes,)
24.144.403 proof of insurance,)
24.144.411 fees, 24.144.501 who must)
obtain an endorsement, 24.144.502)
endorsement examinations,)
24.144.701 fireworks wholesaler permit)
applications, and 24.144.2101)
continuing education, and the repeal of)
24.144.404 duplicate license or)
endorsement, 24.144.415)
apprenticeship programs, 24.144.503)
application procedure, 24.144.702)
fireworks wholesale permits, and)
24.144.2102 renewals, all pertaining to)
the Fire Protection License Program)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On February 11, 2021, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal 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/92728672482>, Meeting ID: 927 2867 2482, Passcode: 051763; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 927 2867 2482, Passcode: 051763.

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 February 4, 2021, to advise us of the nature of the accommodation that you need. Please contact Carrie Baker, Fire Protection License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or e-mail cbaker@mt.gov.

3. GENERAL REASON: Following a January 2020 internal transfer of the Fire Protection License Program (program) from the Building Codes Program to the Professional Licensing Bureau, department staff performed an in-depth review of the program's statutes and administrative rules. The department determined it is reasonably necessary to amend several program rules at this time to align with and gain efficiencies from standardized department procedures, remove conflicts between statutes and the implemented rules, and streamline the rules for better organization and ease of use for the reader. Additionally, staff discovered a large number of rules are out-of-date with industry standards and the licensure pathway via the National Institute for Certification in Engineering Technologies (NICET) requires updating. Where a more specific reason for a proposed amendment exists, the department will identify those reasons immediately following that rule.

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

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

24.144.301 DEFINITIONS The following definitions apply to the use of the listed terms in Title 50, chapter 39, part 1, MCA, and in these rules:

(1) remains the same.

(2) "ESA/NTS" means the Electronic Security Association/National Training School.

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

(5) "National testing agency" means a certifying organization that has been approved by the department as having qualifications that are at least substantially equivalent to the requirements of this state for licensing.

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

AUTH: 50-39-107, MCA

IMP: 50-39-101, 50-39-102, 50-39-103, ~~50-39-104, 50-39-105, 50-39-106,~~ 50-39-108, MCA

REASON: The department determined it is reasonably necessary to add the definitions of Electronic Security Association/National Training School (ESA/NTS) and national testing agency to align with changes proposed to ARM 24.144.502.

24.144.402 DUTY TO REPORT NAME, OR ADDRESS, AND OWNERSHIP CHANGES (1) An entity licensed or ~~person~~ individual endorsed shall report a change of name or address to the department within 15 days of the change. The entity or person shall also record the new name or address on the reverse side of the license and endorsement.

(2) An entity licensed shall report a change of ownership to the department within 15 days of the change.

AUTH: ~~50-3-102~~, 50-39-107, MCA
IMP: ~~50-3-102~~, 50-39-101, 50-39-102, MCA

REASON: It is reasonably necessary to change "person" to "individual" in (1) to address questions by clarifying that business entities may be licensed, and individuals may obtain endorsements.

The department is adding (2) to require notification of ownership changes within 15 days of the change. The public and local fire marshals rely on the accuracy of the department's records in determining which fire protection entities are licensed and competent to service, sell, or install fire protection equipment. Additionally, failure to promptly notify the department of ownership changes can result in confusion and delays at renewal. This requirement is consistent with ownership change reporting for other division boards and programs and will help the department maintain accurate records and ensure more timely follow-up if an ownership change seems suspect.

24.144.403 PROOF OF INSURANCE (1) through (5) remain the same.

AUTH: ~~50-3-102~~, 50-39-107, MCA
IMP: ~~50-3-102~~, 50-39-102, MCA

24.144.411 FEES (1) through (4) remain the same.

(5) Fireworks wholesaler permit	45
(5) One-time processing fee in year of first application for endorsement	25
(6) One-time processing fee in year of first application for license	100
(7) (6) Renewal of endorsement (per endorsement) <u>endorsement(s)</u>, regardless of the number of endorsements held by an individual	100
(8) (7) Renewal of <u>business entity</u> license	200

AUTH: 50-37-104, 50-39-107, MCA
IMP: 50-37-104, 50-39-102, MCA

REASON: The department is relocating the fireworks wholesaler permit fee from ARM 24.144.701 to (5) so all program fees are in a single rule.

Following the internal transfer, department staff analyzed the program's budget over the past five years. It was determined that the fees are not commensurate with the costs of administering the program as the program is nearing the statutory cash limit of twice the program's annual appropriation at 17-3-302, MCA.

Staff also found that no other licensing program has "one-time processing fees" and could not determine a need for the Fire Protection License Program to retain these fees. Further, the method of charging renewal fees per endorsement is consistently confusing to licensees and causes additional work for staff to collect the correct fees. The department determined it is reasonable to amend (6) to change to a flat renewal fee, regardless of the number of endorsements an individual holds.

The department determined it is reasonably necessary to amend and eliminate certain fees to comply with 50-37-104, MCA, which requires that program fees are commensurate with costs of administering the licensure program. In analyzing the program's budget, the department concluded that unless the fees are decreased as proposed, the program will violate the statutory cash limit in 17-3-302, MCA. The department estimates that the proposed fee changes will affect approximately 100 applicants and license/permit holders and reduce annual revenue by \$3,655.

The department is amending (8) to align with terminology used in (4) regarding the business entity license.

24.144.501 WHO MUST OBTAIN AN ENDORSEMENT (1) and (2) remain the same.

~~(3) An apprenticeship program must assure that the person completes the program in no longer than:~~

~~(a) four years for the service or installation of fire alarm systems;~~

~~(b) two years for the service or installation of special agent fire suppression systems;~~

~~(c) five years for the service or installation of fire extinguishing systems.~~

~~(4) An apprentice will be registered and issued a card each year while in good standing that indicates the individual is in a training position and shall not install, inspect, recharge, repair, service or test fire protection equipment without the direct and immediate supervision of a person endorsed by the department.~~

~~(5) An apprentice shall obtain an endorsement within 90 days after completion of the apprentice program.~~

~~(6) The following persons or entities are exempt from the licensing requirements imposed by these rules:~~

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

~~(b) A licensed electrician who installs smoke detection and fire alarm equipment pursuant to building specifications is exempt from obtaining a license or endorsement under this chapter, provided the installation is inspected and approved by a person endorsed to service or install the fire protection equipment.~~

~~(c) An owner or occupant of a single family residence performing installation of fire protection equipment, as long as the authority having jurisdiction approves the installation.~~

AUTH: ~~50-3-102, 50-3-103, 50-39-107, MCA~~

IMP: ~~50-3-102, 50-39-101, 50-39-102, 50-39-103, 50-39-104, 50-39-105, 50-39-106, 50-39-107, MCA~~

REASON: The department is amending this rule to remove the provisions regarding registered apprentices since the program no longer administers apprenticeship standards and individual apprenticeship agreements. The department's Workforce Services Division, Registered Apprenticeship Program, is the registration agency approved by the U.S. Department of Labor, Office of Apprenticeship, to develop and administer apprenticeship standards for all apprenticeable occupations, sponsor qualifications, and individual apprentice agreements.

The department is striking (6)(b) because it unnecessarily duplicates 50-39-101(4), MCA, providing that licensed electricians may install fire protection equipment if the work is inspected and approved by someone endorsed to sell, service, or install the fire protection equipment.

The department is striking (6)(c) following staff advice that the provision may exceed the scope of the program's statutes at Title 50, chapter 39, part 1, MCA, which contain no licensing exceptions for owner/occupants of single-family residences.

24.144.502 EXAMINATION FOR ENDORSEMENT (1) The department shall issue an endorsement for both non-pre-engineered and pre-engineered fire alarm systems, special fire agent suppression systems, or fire extinguishing systems to an individual who pays the required fee and submits satisfactory documentation that the applicant satisfies one of the following:

(a) remains the same.

(b) has been issued a letter of certification, specific to the endorsement being sought;

~~(i) of NICET Level II or higher; or is a candidate for certification from NICET Level II or higher. The letter of certification must be sent directly to the program office from NICET;~~

~~(ii) from ESA/NTS as a certified alarm technician level II or higher for a fire alarm systems endorsement; or~~

~~(iii) from any national testing agency approved by the department per ARM 24.144.301; or~~

~~(c) has passed the following NICET examination elements, for the system(s) for which endorsement is sought, as specified below:~~

~~(i) automatic sprinkler fire extinguishing system (NICET) examination requirements:~~

~~13001 construction plans~~

~~13002 fire protection plans and symbols~~

~~13003 specifications and cost estimates~~

~~13005 basics of system layout~~

~~13006 classification of occupancies~~

~~13007 water supply requirements~~

~~13008 system connections~~

~~13009 system piping configurations, schedules and sizes~~

~~13010 requirements of spacing~~

~~13011 sprinkler location and position~~

~~13012 pipe joining techniques and fittings~~

~~13013 pipe hangers and hanging~~

~~13014 wet and dry systems~~

~~13016 underground piping~~

~~13017 building codes~~

~~13020 common material specifications~~

~~13021 system components and limitations~~

~~13023 special sprinklers~~

~~13024 water flow test~~

~~13026 dwelling sprinklers~~
~~14002 selection of fire pumps~~
~~14004 pump flow test~~
~~14005 high piled storage~~
~~14006 rack storage~~
~~14007 sprinkler system maintenance~~
~~14009 standpipe systems~~
~~14010 fire pumps and systems~~
~~14011 storage tanks~~
~~14012 alarms and system supervision~~
~~14013 fundamentals of fire extinguishment~~
~~14015 seismic bracing;~~
~~(ii) fire alarm system endorsement (NICET) examination requirements:~~
~~33001 fire protection plans and symbols~~
~~33002 basics of system layout~~
~~33003 electrical installation standards~~
~~33004 basic fire alarm signaling systems~~
~~33005 supervision and supervisory service~~
~~33006 detection methods~~
~~33007 detector spacing~~
~~33008 power supplies~~
~~33009 system acceptance and periodic tests~~
~~33010 construction plans~~
~~33011 specifications and cost estimates~~
~~33013 building codes~~
~~33016 local protective signaling systems~~
~~33017 auxiliary protective signaling systems~~
~~33018 remote station protective signaling systems~~
~~33019 proprietary protective signaling systems~~
~~33020 central station signaling systems~~
~~33021 manual fire alarm systems and guard's tour service~~
~~33022 heat sensing fire detectors~~
~~33023 smoke sensing fire detectors~~
~~33024 flame sensing fire detectors~~
~~33025 sprinkler waterflow and supervisory devices~~
~~33026 alarm indicating appliances~~
~~33027 basics of signal transmission~~
~~34001 emergency voice/alarm communication systems~~
~~34002 signal processing~~
~~34003 surveys for fire alarm and detection systems~~
~~34004 fire alarm system maintenance~~
~~34005 fire alarm system wiring~~
~~34006 emergency evacuation signals;~~
~~(iii) special agent fire suppression system endorsement (NICET) examination requirements:~~
~~23101 materials and components~~
~~23102 standard symbols~~

~~23103 specifications and cost estimates~~
~~23104 hazard analysis~~
~~23105 detection methods~~
~~23106 fundamentals of fire extinguishment~~
~~23107 extinguishing agents~~
~~23108 heat sensing detectors~~
~~23109 smoke sensing detectors~~
~~23110 flame detectors~~
~~23111 fire gas detectors~~
~~23112 foam water systems~~
~~23113 halon 1301 systems~~
~~23114 carbon dioxide systems~~
~~23115 dry chemical systems~~
~~23116 halon 1211 systems~~
~~23117 electrical installation standards~~
~~23118 area, volume and weight calculations~~
~~24101 explosion prevention and venting;~~

~~(c) has successfully completed an apprenticeship program approved by the department; or~~

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

~~(2) remains the same.~~

AUTH: ~~50-3-102~~, 50-39-107, MCA

IMP: ~~37-1-131~~, 50-39-101, 50-39-102, MCA

REASON: In reviewing current licensure examinations, department staff concluded that the Electronic Security Association/National Training School (ESA/NTS) examination for a Certified Alarm Technician Level II (CAT II) effectively measures an applicant's knowledge of fire alarm systems and passage of the examination demonstrates licensure competency. It is reasonably necessary to clarify in (1)(b)(ii) that this certification is acceptable for a fire alarm systems endorsement.

It is reasonably necessary to add (1)(b)(iii) to clarify the acceptance of endorsement certification from national testing agencies. Section 50-39-102, MCA, requires the department to issue endorsements to applicants certified in the area of the endorsement by any department-approved national testing agency. With more testing agencies becoming available, the department is defining "national testing agency" in ARM 24.144.301 and amending this rule to allow the department to consider applicants' certification from any qualified testing agency and without having to maintain a list of agencies in rule.

The department is amending this rule to remove the list of specific elements in the NICET (National Institute for Certification in Engineering Technologies) examination. NICET has changed the examination numbers and titles for many of these examination elements and therefore the list is not current or accurate. Because the approved NICET credentials are set forth in (1)(b), it is not necessary to list the specific examination elements.

The department is striking (1)(c) to align with the repeal of ARM 24.144.415 in this notice as the program no longer administers apprenticeship standards and individual apprenticeship agreements.

The department will continue to review ESA/NTS, national testing agencies, and NICET credentials for continued acceptance and other national testing entities for possible acceptance.

24.144.701 APPLICATION FOR FIREWORKS WHOLESALER PERMIT

(1) Applicants for fireworks wholesaler permits must submit an application form, ~~prescribed by the department, along with a \$55.00 application pay the appropriate fee, and meet the qualifications of 50-37-104, MCA.~~

~~(2) The application form must contain the applicant's name, permanent address, business name, if any, principal place of business and a statement that the applicant has not been convicted of a crime involving the use, possession or sale of fireworks. The application must be notarized and accompanied by a certified copy of the applicant's birth certificate and three notarized letters attesting to the applicant's good moral character.~~

AUTH: 50-37-104, MCA

IMP: 50-37-104, MCA

REASON: The board is amending this rule to align with the requirement of 2-4-305, MCA, that administrative rules may not unnecessarily repeat statutory language. Following amendment, the rule will simply reference the statute containing the qualifications for fireworks wholesaler permits.

The board is striking (2) because the department administers standardized application procedures for all professional and occupational licensing boards and programs, and it is not necessary to repeat procedural provisions in program rule. These standardized procedures use consistent means of proving qualifications to streamline and expedite application processing time, such as attestations and questions on prior discipline.

24.144.2101 CONTINUING EDUCATION (1) Continuing education (CE) is that education ~~obtained which is required~~ in addition to the educational requirements for endorsement.

(2) The department will not pre-approve CE programs or sponsors. It is the responsibility of the endorsee to select quality programs that are Continuing education must be related to the practice of installing or servicing fire protection equipment.

~~(2) (3) An endorsee Endorsees shall obtain a minimum of eight four hours (60 minutes per hour) annually and affirm an understanding of their recurring duty to comply with CE requirements as a part of license renewal. submit copies of continuing education certificates with the application for renewal. Up to eight hours earned in excess of the eight hours required in a licensing year may be carried over into the succeeding year. All applicants for renewal of endorsements shall have completed continuing education as provided in this rule as a condition to establish~~

eligibility for renewal. The continuing education CE requirement will ~~will~~ does not apply until the an endorsee's first full year of endorsement.

(4) The department may randomly audit up to 50 percent of renewed endorsees.

(5) Endorsees shall retain documentation of CE completion for three years from the date of completion and provide such documentation to the department upon request.

(6) Continuing education hours or credits may not be carried over to any subsequent reporting period.

(7) Endorsees found to be in noncompliance with CE requirements may be subject to administrative suspension.

~~(3) (8) The department accepts the following continuing education CE programs may be approved by the department for continuing education CE credit:~~

~~(a) remains the same.~~

~~(b) courses in specialized programs approved by the department;~~

~~(c) correspondence course work approved by the department;~~

~~(d) videotaped electronic or online instruction or course work approved by the department;~~

~~(e) any continuing education CE which has been obtained in another state that meets the continuing education requirements of Montana;~~

~~(f) college or vocational school course work, approved by the department, which is germane to the profession and contributes directly to the professional competence of the endorsed individual, subject to the following limitations:~~

~~(i) remains the same.~~

~~(ii) one semester credit shall equal 15 hours of continuing education CE; and~~

~~(iii) one quarter credit shall equal 10 hours of continuing education CE.~~

~~(g) teaching courses that are germane to the profession. Credit units may be applied in this category based on a report by the endorsed individual. For a one-hour presentation, the presenter will be awarded two hours of continuing education CE. The following limitations shall apply to ~~requests for~~ credit under this section:~~

~~(i) documentation must be submitted showing the licensee endorsee as the instructor of the course;~~

~~(ii) the course must be addressed to endorsed individuals or apprentices in order to qualify for credit;~~

~~(iii) remains the same.~~

~~(iv) instruction of any course may be submitted for continuing education CE only once.~~

AUTH: ~~50-3-102~~, 50-39-107, MCA

IMP: 37-1-141, 37-1-321, 37-1-420, 50-39-102, MCA

REASON: The department is amending this rule to align with and further facilitate the department's standardized renewal, administrative suspension, and audit procedures, and streamline the rule for better organization and ease of use for the reader. As part of the standardization, the department is placing the responsibility on endorsees to select quality continuing education (CE) programs that contribute to their knowledge and competence. Following amendment, the department will no

longer approve sponsors or courses as endorsees must choose CE that meets the education objectives described in this rule.

Following a recommendation by legal staff, the department is amending (3) to align the affirmation of CE requirements at renewal with the provisions of 37-1-420, MCA. The amendments fall within standardized department procedures that endorsees with mandatory CE affirm an understanding of their CE requirements as part of a complete renewal application, instead of affirming CE completion.

The department is reducing the annual CE requirement from eight hours to four hours. There have been only been two disciplinary actions against endorsees in the last five years, demonstrating that endorsee noncompliance and unprofessional conduct have been very minimal. Additionally, several other neighboring states do not require CE for fire alarm and fire extinguishing or suppression system professionals. Therefore, the department determined it is reasonably necessary to reduce the number of CE hours to be more consistent with these states while still ensuring continued competency of endorsees.

The department is eliminating the ability for endorsees to carry over CE credits to a subsequent reporting period. Because the required hours are being reduced from eight to four, it is not necessary to allow CE carryover.

The department is adding (4) to allow flexibility in conducting random CE audits. This amendment will allow the department to respond to staffing and budget issues by adjusting the number of endorsees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-420, MCA.

To facilitate the standardized audit procedures, the department is specifying at (5) that endorsees must maintain their CE records for three years and provide them upon department request.

The department is clarifying in (7) that endorsees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

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

24.144.404 DUPLICATE LICENSE OR ENDORSEMENT

AUTH: 50-3-102, MCA

IMP: 37-1-134, 50-3-102, MCA

REASON: It is reasonably necessary to repeal this rule since licensees/endorsees are able to access licenses/endorsements online and print them at any time. Very few requests for duplicate licenses/endorsements are received and there is no standard fee for duplicates.

24.144.415 APPRENTICES-APPROVED PROGRAMS

AUTH: 50-39-107, MCA

IMP: 50-39-101, MCA

REASON: The department proposes to repeal this rule because the Fire Protection License Program no longer administers apprenticeship standards and individual apprenticeship agreements. The department's Workforce Services Division, Registered Apprenticeship Program, is the registration agency approved by the U.S. Department of Labor, Office of Apprenticeship, to develop and administer apprenticeship standards for all apprenticeable occupations, sponsor qualifications, and individual apprentice agreements.

24.144.503 APPLICATION PROCEDURE

AUTH: 50-39-107, MCA

IMP: 50-39-102, 50-39-103, 50-39-105, MCA

REASON: The department administers standardized application procedures for all professional and occupational licensing boards and programs to streamline and expedite application processing. It is reasonably necessary to repeal this rule as it is not necessary to duplicate these procedures in program rule.

24.144.702 CONTENTS OF FIREWORKS WHOLESALE PERMIT

AUTH: 50-37-104, MCA

IMP: 50-37-104, MCA

REASON: The department is repealing this rule as unnecessary. There is no requirement to post fireworks wholesale permits and the content of a department-issued permit is at the department's discretion.

24.144.2102 RENEWALS

AUTH: 37-1-141, 50-39-107, MCA

IMP: 37-1-141, 50-39-102, MCA

REASON: The department is repealing this rule because the department administers a standardized renewal process for all professional and occupational licensure boards and programs, and it is not necessary to repeat the procedural provisions in this program rule.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Fire Protection License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to cbaker@mt.gov, and must be received no later than 5:00 p.m., February 12, 2021.

7. An electronic copy of this notice of public hearing is available at <http://boards.bsd.dli.mt.gov/fpl> (department and program's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to

system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. 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 program 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 Fire Protection License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to cbaker@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

10. Regarding the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.144.301, 24.144.402, 24.144.403, 24.144.411, 24.144.501, 24.144.502, 24.144.701, and 24.144.2101 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the department has determined that the repeal of ARM 24.144.404, 24.144.415, 24.144.503, 24.144.702, and 24.144.2102 will not significantly and directly impact small businesses.

Documentation of the department's above-stated determinations is available upon request to the Fire Protection License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; facsimile (406) 841-2305; or to cbaker@mt.gov.

11. Carrie Baker, Program Manager, 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 December 30, 2020.

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

In the matter of the amendment of) NOTICE OF EXTENSION OF
ARM 37.85.105 pertaining to) COMMENT PERIOD ON
updating Medicaid provider rates, fee) PROPOSED AMENDMENT
schedules, and effective dates)

TO: All Concerned Persons

1. On November 6, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-933 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2048 of the 2020 Montana Administrative Register, Issue Number 21. On November 20, 2020, the department published an amendment to this notice at page 2111 of the 2020 Montana Administrative Register, Issue Number 22.

2. A public hearing was held November 30, 2020. The comment period is being extended to 5:00 p.m. on January 22, 2021, to allow interested persons additional time to comment on the proposed amendment of the above-referenced rule. The department has published proposed fee schedules that incorporate procedure codes that were recently published by the Centers for Medicare and Medicaid Services and that the department is required to follow. The proposed fee schedules are posted at: <https://medicaidprovider.mt.gov/proposedfs>.

3. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 20, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, DPHHS, 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.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., January 22, 2021.

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

/s/ Erica Johnston
Erica Johnston, Interim Director
Public Health and Human Services

Certified to the Secretary of State January 5, 2021.

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 37.27.902, 37.87.102, and) PROPOSED AMENDMENT
37.88.101 pertaining to licensed)
marriage and family therapists)

TO: All Concerned Persons

1. On February 4, 2021, 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/96091172735>; meeting ID: 960 9117 2735; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 960 9117 2735. Find your local number: <https://mt-gov.zoom.us/u/aek3s4OkkV>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on January 29, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.27.902 SUBSTANCE USE DISORDER SERVICES: AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~October 1, 2020~~ March 1, 2021, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at <http://dphhs.mt.gov/amdd.aspx>.

(3) remains the same.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

37.87.102 MENTAL HEALTH SERVICES (MHS) FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), DEFINITIONS As used in this chapter, the following terms apply:

- (1) and (2) remain the same.
- (3) "Mental health professional" means one of the following practitioners:
 - (a) through (c) remain the same.
 - (d) licensed clinical social worker; ~~or~~
 - (e) licensed marriage and family therapist; or
 - (e) remains the same but is renumbered (f).
- (4) through (8) remain the same.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health (Manual), dated ~~October 1, 2020~~ March 1, 2021, which it adopts and incorporates by reference. The purpose of the Manual is to implement requirements for utilization management and services. A copy of the Manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at <http://dphhs.mt.gov/amdd.aspx>.

- (3) through (5) remain the same.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.27.902, 37.87.102, and 37.88.101 to include licensed marriage and family therapist (LMFT) as a service provider type in the Montana Medicaid service package. The LMFT provider type is being added to expand the availability of trained and licensed mental health providers across Montana to address Montana's shortage of mental health providers. Adding this provider type will expand access to mental health services for Montana Medicaid members.

The LMFT provider type is being added to the definition of mental health professional in ARM 37.87.102 for mental health services provided to children. ARM 37.27.902 and 37.88.101 adopt and incorporate the Addictive and Mental Disorders

Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health (manual). The department proposes to update the date of the manual to March 1, 2021, and amend Policy 425, Mental Health (MH) Outpatient (OP) Therapy, to allow LMFT to be reimbursed for outpatient therapy services.

Fiscal Impact

Provider Type	SFY 2021 Fiscal Impact (State Funds)	SFY 2021 Fiscal Impact (Federal Funds)	SFY 2021 Fiscal Impact (Total Funds)	Active Provider Count
Licensed Marriage and Family Therapist (LMFT)	\$81,165	\$150,735	\$231,900	48

The department intends for these proposed amendments to be effective March 1, 2021.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., February 12, 2021.

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.

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can

be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

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

/s/ Erica Johnston
Erica Johnston, Interim Director
Public Health and Human Services

Certified to the Secretary of State January 5, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to common carrier reporting of alcoholic beverage shipments) NOTICE OF PROPOSED ADOPTION) NO PUBLIC HEARING) CONTEMPLATED

TO: All Concerned Persons

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later 5:00 p.m. on January 22, 2021, to advise us of the nature of the accommodation you need. 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 e-mail todd.olson@mt.gov.

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

NEW RULE I REPORTING REQUIREMENTS FOR COMMON CARRIERS

(1) A common carrier that delivers shipments identified as containing alcoholic beverages to a person or entity in the state shall maintain those shipping records for 30 months and, upon request from the department, report such deliveries to the department as provided in (2).

(2) Reports must be filed electronically on a form provided by the department on or before the 15th day of each January, April, July, and October for deliveries made during the previous quarter, and include the following information about each delivery:

- (a) name and address of the consignor of the alcoholic beverages;
- (b) name and address of the consignee of the alcoholic beverages;
- (c) date of delivery;
- (d) weight of the package; and
- (e) freight tracking information for the shipment.

(3) If the department determines that a reported delivery transaction violates the Alcoholic Beverage Code or a rule of the department, then the department will notify the common carrier of the basis of the violation so the carrier may take the appropriate action to cease further deliveries of alcoholic beverages in Montana from that consignor until otherwise notified by the department.

AUTH: 16-1-303, MCA

IMP: 16-3-101, 16-6-108, 16-6-302, MCA

REASONABLE NECESSITY: The department has been monitoring retailer complaints regarding the increase in unlawful shipments of alcoholic beverages from unlicensed or unregistered out-of-state sources to persons or entities in the state. The shipments are unlawful because they bypass the state's controlled taxation, distribution, and sales processes and are an express violation of 16-3-101, MCA. While a majority of these unlawful sales transactions originate from orders placed on the internet, the product is often shipped or delivered using national common carrier freight companies.

The department proposes the adoption of New Rule I which is necessary for the department to provide detailed guidance to common carriers about the shipping and delivery information sought by the department under its common carrier records inspection authority provided in 16-6-108, MCA, and in connection with the department's enforcement of 16-3-101, MCA, to reduce the amount of unlawful alcoholic beverages entering the state.

New Rule I is similar to regulations that have been adopted in other alcoholic beverage control states where common carriers conduct business and the department has been notified by national common carrier representatives that the shipping and delivery information is readily available and is commonly reported when a state has such a regulation as proposed in New Rule I.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing 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 and must be received no later than 5:00 p.m., February 15, 2021.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Todd Olson, at the above address, no later than 5:00 p.m. February 15, 2021.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be five common carriers based on the department's estimation that 50 common carriers in the state are, or may be, conducting the specific business activity impacted by the proposed rule.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which

program the person wishes to receive notices. Notices will be sent by e-mail unless a different mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in #4 above or may be made by completing a request form at any rules hearing held by the department.

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

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption 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 December 31, 2020.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rules I, II, III, and IV and the) AMENDMENT
amendment of ARM 4.19.101,)
4.19.102, 4.19.103, 4.19.104,)
4.19.107, 4.19.108, and 4.19.110)
pertaining to Hemp)

TO: All Concerned Persons

1. On November 6, 2020, the Department of Agriculture published MAR Notice No. 4-20-270 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1946 of the 2020 Montana Administrative Register, Issue Number 21.

2. The department has adopted the following rules as proposed: New Rules I (4.19.111), II (4.19.112), III (4.19.113), and IV (4.19.203).

3. The department has amended ARM 4.19.102, 4.19.107, 4.19.108, and 4.19.110 as proposed.

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

4.19.101 DEFINITIONS (1) through (9) remain as proposed.

(10) "Research" means growing hemp in a manner which the resulting hemp may not conform to the USDA guidelines in some manner. This includes but is not limited to the use of a pesticide not approved for hemp, efforts to lower a cultivar's THC level through hybridization, or development of new cultivars which are not from certified seed. Research must be conducted with the intent of improving or expanding upon the genetics and/or cultivation practices of hemp.

(10) and (11) remain as proposed but are renumbered (11) and (12).

AUTH: 80-18-107, MCA

IMP: 80-18-101, 80-18-102, 80-18-103, 80-18-106, 80-18-107, 80-18-110, 80-18-111, MCA

REASON: See Comment 8

4.19.103 MONTANA STATE HEMP PROGRAM (1) remains as proposed.

(2) Live hemp plants or propagatable hemp plant parts may only be sold to persons licensed to grow hemp. Viable hemp seed intended for propagation may only be sold to persons licensed to grow hemp or persons licensed to process, condition, or sale sell seed for propagation. Hemp grain, ~~sold as a commodity~~

intended for use as an approved food ingredient or oil, may only be sold to persons licensed to purchase, handle, or process hemp grain or another commodity.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

REASON: See Comments 4 and 11

4.19.104 PROGRAM FEES (1) through (4) remain as proposed.

(5) The director may waive all or part of any of these fees, if there is sufficient money to perform the regulations of the hemp act without them. This waiver may be individual, institutional, or by category of hemp seed. The waiver must have a time limit in it when granted.

AUTH: 80-1-102, 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, 80-18-110, MCA

REASON: See Comment 5

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

COMMENT 1: The fees per sampling/testing would only be triggered when the grower requests them.

RESPONSE 1: The fees are charged when the grower is required to get them for compliance or when they request them. This usually occurs because the grower has multiple varieties or lots, or because it is an indoor grow environment with multiple harvest dates. If the department or law enforcement request additional samples/test above and beyond those required for USDA compliance, the grower would not be charged.

COMMENT 2: Hemp licensees should be made available as quickly as possible in the calendar year.

RESPONSE 2: It is the department's goal to have that happen. Occasionally changes in federal rule or law may slow down the speed at which the department can update its own rules or forms to keep up.

COMMENT 3: The language about record keeping is overly board.

RESPONSE 3: It would be all of the paperwork related to hemp that would show compliance with the state law and any that would help track the hemp or hemp derivative next movement from the grower or processor. As of 2020, hemp is still a regulated plant and failure to have the proper records would make it extremely difficult to show that laws were followed. As regulations become more exact the amount of paperwork should diminish.

COMMENT 4: There is a typo in ARM 4.19.103(2). "Sale" should be "sell."

RESPONSE 4: The department agrees and will amend the rule to read "sell." See changes in ARM 4.19.103.

COMMENT 5: Numerous commenters requested that the A/B lower fees and sampling rate be kept under the pilot program extension or just be kept lower.

RESPONSE 5: The department needs to generate enough fees to cover the expenses of the program. By being able to remain in the pilot program for at least the majority of 2021, the department should be able to waive some of the sampling and testing fees for As and Bs that are not part of the random sampling required. The rule is being further amended to allow for such a waiver at the discretion of the director.

COMMENT 6: Numerous commenters expressed support for the department continuing to run a state program as opposed to turning it over to the USDA.

RESPONSE 6: No response is necessary.

COMMENT 7: Numerous commenters wanted the category system kept and/or support for moving the system online for As and Bs.

RESPONSE 7: The department agrees.

COMMENT 8: Commenters requested definitions for "research" and "indoor."

RESPONSE 8: The department agrees that a definition for "research" would avoid confusion; however, the definition of "indoor" is not unique to this rule or law. See changes in ARM 4.19.101.

COMMENT 9: A commenter requested that there be a method to create new seed types for propagation under the research license.

RESPONSE 9: The department intended just such a scenario in New Rule I(2)(f). The researcher would be able to retain the seed in that case, notify the department, and change a future planting to be a non-research planting.

COMMENT 10: A commenter said that New Rule IV is inconsistent.

RESPONSE 10: The new rule is meant to clear up confusion that was leading growers to believe that they had an exemption to other laws.

COMMENT 11: If the department plans to remove hemp grain from the commodity dealers' rules at some point, it should not be referred to as a commodity.

RESPONSE 11: The department agrees, and the language has been corrected to show the change. See ARM 4.19.103.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Mike Foster
Mike Foster
Director
Agriculture

Certified to the Secretary of State January 5, 2021.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 12.11.501 and 12.11.4101 pertaining to closing the Shields River to all motorized watercraft) NOTICE OF ADOPTION AND AMENDMENT))))

TO: All Concerned Persons

1. On September 11, 2020, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-530 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1690 of the 2020 Montana Administrative Register, Issue Number 17.

2. The commission has adopted the following rule as proposed: New Rule I (12.11.633).

3. The commission has amended the following rule as proposed: ARM 12.11.4101.

4. The commission has amended ARM 12.11.501 not included in the original proposal, new matter underlined, deleted matter interlined:

12.11.501 LIST OF WATER BODIES The following is a list of specific regulations on bodies of water with the reference where the rules regarding those bodies of water are located:

(1) through (102) remain the same.

(103) Shields River ARM 12.11.633

(103) through (121) remain the same but are renumbered (104) through (122).

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

REASON: The commission maintains ARM 12.11.501 as a cross-reference to assist with locating rules pertaining to specific water bodies. The commission is amending ARM 12.11.501 to include the Shields River.

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

COMMENT #1: The commission received comments in opposition of the proposed rule banning motorized use on the Shields River. Comments opposing the proposal stated that removal of motorized use on the Shields would impact the public's ability

to access the waterway as access for non-motorized use is limited, questioned the safety issues on the river as well as the technological advancements of motorized vessels, and stated that the existing 10-horsepower restriction was sufficient.

RESPONSE #1: The commission discussed the concerns related to these comments. The commission discussed access and the small impact this would have as there is very little motorized recreation occurring on the Shields River currently and that recreational use with motorized watercraft is better suited to and provided on larger rivers in the area such as the Yellowstone River. Ultimately, the commission decided that the potential safety issue was sufficient to adopt the rule banning motorized use on the Shields River.

COMMENT #2: The commission received two comments requesting that a citizen advisory committee should be created pursuant to ARM 12.11.425 before removing motorized access on the Shields River.

RESPONSE #2: These comments reference ARM 12.11.425. A citizen advisory committee is required when the department undertakes formalized river recreation planning as listed in subchapter ARM Title 12, chapter 11, subchapter 4. River recreation planning is initiated by the department, not a petition.

This rule proposal was the result of the citizen-submitted petition allowed under 2-4-315, MCA, to change a boating regulation. This was not a formal river recreation planning process and therefore does not require the formation of a citizen advisory committee.

COMMENT #3: The commission received comments in support of the proposed rule banning motorized use on the Shields River. Comments in support referenced protection of habitat of native fish, streambed degradation, advancements in technology rendering the existing 10-horsepower limit inadequate, safety concerns of potential collisions with people, livestock and structures in narrow and blind spots of the river, and noise.

RESPONSE #3: The commission has adopted the rule as proposed banning motorized use on the Shields River.

COMMENT #4: The commission received a comment suggesting that the 10-horsepower restriction remain but that jet boats should be banned.

RESPONSE #4: Banning a specific type of drive or motorized activity is very difficult as there are no consistent definitions that define a jet boat. There are enough variations in boating drive technology that from an enforcement and legal perspective, it would be difficult to ban jet boats.

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

/s/ Shane Colton
Shane Colton
Chair
Fish and Wildlife Commission

Certified to the Secretary of State January 5, 2021.

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

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 24.156.1601 definitions,)	REPEAL
24.156.1604 training of student)	
physician assistants, 24.156.1617)	
application for physician assistant)	
license, 24.156.1618 physician)	
assistant fees, 24.156.1621 reporting)	
to the board, 24.156.1622 supervision)	
of physician assistant, 24.156.1624)	
patient rights, 24.156.1625)	
unprofessional conduct, 24.156.1626)	
management of infectious wastes, and)	
the repeal of 24.156.1620 physician)	
assistant license renewal)	

TO: All Concerned Persons

1. On August 28, 2020, the Board of Medical Examiners (board) published MAR Notice No. 24-156-87 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1561 of the 2020 Montana Administrative Register, Issue No. 16.

2. On September 22, 2020, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the September 25, 2020 deadline.

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

Comments 1 and 2 relate to ARM 24.156.1601 DEFINITIONS

COMMENT 1: Numerous commenters supported the proposed changes to ARM 24.156.1601 and specifically the amendments to the "direct supervision" definition.

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

COMMENT 2: Numerous commenters suggested the board strike the definition of "direct supervision" and change "general supervision" in (3) to "supervision." The commenters stated that circumstances where supervising physicians are "physically present" are rare and believed their proposed changes would more accurately reflect the role of PAs within health care and the movement toward a more collaborative

practice approach. The commenters stated the distinction between "direct" and "general" supervision is already causing confusion among licensees.

RESPONSE 2: The commenters' suggested amendments exceed the scope of the proposed changes and therefore cannot be accomplished in a final notice of adoption.

Comments 3 and 4 relate to ARM 24.156.1617 APPLICATION FOR PHYSICIAN ASSISTANT LICENSE

COMMENT 3: Numerous commenters requested the board provide greater specificity regarding the board-approved online training for PAs and supervising physicians in (1)(d), particularly whether the training is intended to focus on the regulation of the supervision relationship and supervisory obligations. The commenters also suggested the rule specify that a certificate of completion indicates training attendance and not that the PA had passed a test on the training materials.

RESPONSE 3: The commenters' suggested amendments exceed the scope of the proposed changes and therefore cannot be accomplished in a final notice of adoption. Additionally, the board explained in this rule's reasonable necessity its intent to identify a "new online education module and test." The rule as proposed allows the board future flexibility in requirements, platforms, etc.

COMMENT 4: Many commenters requested the board clarify who is responsible for the cost of the National Practitioner Data Base query in (2).

RESPONSE 4: The board pays for the NPDB query. This language was previously added to rules for other license types and the board wishes to maintain consistency.

COMMENT 5: Numerous commenters support the proposed amendments to ARM 24.156.1621.

RESPONSE 5: The board appreciates all comments received during the rulemaking process.

Comments 6 through 10 relate to ARM 24.156.1622 SUPERVISION OF PHYSICIAN ASSISTANT

COMMENT 6: Several commenters requested the board provide greater specificity regarding the board-approved online training for PAs and supervising physicians in (2), particularly whether the training is intended to focus on the regulation of the supervision relationship and supervisory obligations. The commenters also suggested the rule specify whether a certificate of completion indicates training attendance or that the PA passed a test on the training materials.

RESPONSE 6: See RESPONSE 3.

COMMENT 7: Numerous commenters fully supported the proposed amendments to (3), stating that it more accurately reflects how supervision occurs, especially with the proliferation of telemedicine.

RESPONSE 7: The board appreciates all comments received during the rulemaking process.

COMMENT 8: One commenter suggested the board remove the minimum requirement that a supervising physician communicate with a supervisee PA once a month in (3). The commenter believed there should be daily communication between the PA and supervising physician and that inadequate supervision is occurring today. The commenter believed the monthly communication requirement is a "waste of time" and is not adequately enforced.

RESPONSE 8: The board cannot make significant amendments to the rule in this final notice of adoption. The board does not believe the requirement is a "waste of time" and concluded that the communication requirement between the supervising physician and supervised PA provides appropriate minimum guidelines for supervision and oversight of PA practice.

COMMENT 9: Numerous commenters suggested the board remove the classification of "general supervision" from (1)(c), believing that direct supervision best protects patients. The commenters pointed to the differences in training between PAs and dermatologist physicians and argued that optimal care occurs when PAs are under the direct supervision of a qualified physician.

RESPONSE 9: The commenters' suggested amendments exceed the scope of the proposed changes and therefore cannot be accomplished in a final notice of adoption.

COMMENT 10: Numerous commenters suggested the board strike the definition of "direct supervision" and change "general supervision" in (1)(c) to "supervision." The commenters stated that circumstances where supervising physicians are "physically present" are rare and stated the distinction between "direct" and "general" supervision is already causing confusion among licensees.

RESPONSE 10: The commenters' suggested amendments exceed the scope of the proposed changes and therefore cannot be accomplished in a final notice of adoption.

COMMENT 11: Numerous commenters supported the proposed amendments to ARM 24.156.1625.

RESPONSE 11: The board appreciates all comments received during the rulemaking process.

4. The board has amended ARM 24.156.1601, 24.156.1604, 24.156.1617, 24.156.1618, 24.156.1621, 24.156.1622, 24.156.1624, 24.156.1625, and 24.156.1626 exactly as proposed.

5. The board has repealed ARM 24.156.1620 exactly as proposed.

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

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

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

Certified to the Secretary of State December 31, 2020.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.24.450 milk control)
assessments)

TO: All Concerned Persons

1. On November 20, 2020, the Board of Milk Control published MAR Notice No. 32-20-313 pertaining to the proposed amendment of the above-stated rule at page 2101 of the 2020 Montana Administrative Register, Issue Number 22.

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

3. No comments or testimony were received.

4. This rule amendment is effective July 1, 2021.

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

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

Certified to the Secretary of State January 5, 2021.

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 37.36.604 pertaining to)
Montana Telecommunications)
Access Program (MTAP) financial)
eligibility criteria)

TO: All Concerned Persons

1. On November 20, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-936 pertaining to the proposed amendment of the above-stated rule at page 2113 of the 2020 Montana Administrative Register, Issue Number 22.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.
4. This rule amendment is effective upon adoption.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Rule Reviewer

/s/ Erica Johnston
Erica Johnston, Interim Director
Public Health and Human Services

Certified to the Secretary of State January 5, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On October 9, 2020, the Department of Revenue published MAR Notice No. 42-1024 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1832 of the 2020 Montana Administrative Register, Issue Number 19. On November 6, 2020, the department published a notice of extension of comment period on the proposed amendment of the above-stated rules at page 2078 of the 2020 Montana Administrative Register, Issue Number 21.

2. On October 30, 2020, a public hearing was held via videoconference to consider the proposed amendment. No proponents were present, no proponent oral testimony was received, and the department received no written comments in direct support. The following persons were present but did not provide oral testimony: Josef Kuchera, F.H. Stoltze Land and Lumber Company (Stoltze Land & Lumber); Sara McConnell, City of Helena. The following persons also provided written comments: Paul McKenzie, Stoltze Land & Lumber; the Forest Lands Taxation Advisory Committee, established under 15-44-103, MCA (committee). The committee's comments and recommendations relative to this rulemaking were provided to the department in the form of summarized meeting minutes from its December 7, 2020 meeting. The committee also provided the department with its final 2021 valuation cycle observations and recommendations - which are not directly related to this rulemaking - in its correspondence dated December 14, 2020. The department will respond to the committee's December 14 letter independently from the responses contained herein.

3. The department has amended ARM 42.18.121 and adopted the reappraisal plan and valuation manuals described therein as proposed, except for the proposed 2021-2026 Montana Forest Land Classification and Valuation Manual (Manual), which has been revised upon adoption in response to comments and recommendations to reinstate content in the Manual which was proposed for discontinuation from the 2015 publication.

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

COMMENT 1: In his October 23 comments, Mr. McKenzie commented that Stoltze Land & Lumber had been waiting for the committee to convene to discuss the 2021-2026 valuation cycle because the committee had not met since 2014. Mr. McKenzie also provided commentary on his understanding of the function of the committee in

its advisory role to the department and expressed concern that the committee had not provided, among other valuation matters, its review or recommendations for the Manual.

RESPONSE 1: Section 15-7-103, MCA, provides that committee membership is determined by appointment from legislative leaders and the Governor. The department made its inquiries about the status of the committee, but a majority of the appointments were not made until November 9, 2020, and the committee is still not fully appointed. The department cannot offer any speculation regarding the absence of committee meetings since 2014 or the timing of the committee members' appointments.

Regarding Mr. McKenzie's commentary and concerns about the committee in its advisory role to the department, the committee's technical functions of data review in 15-44-103(10)(c), MCA, are plainly stated, and are not necessarily inclusive with the purpose and substance of this rulemaking. Notwithstanding, the department understands Mr. McKenzie's concerns about the committee's review of the Manual incidental to its statutory data review prior to the adoption of the Manual. However, ARM 42.18.121 and the adopted and incorporated plan and manuals are intended to provide stakeholders and the public with beneficial information about the department's valuation processes and methodology and not be a primary source for forest land valuation cycle data such as productivity values, stumpage values, wood production, capitalization rates, net income, and agriculture-related income.

Since Mr. McKenzie is a member of the committee, he will also receive the department's responses to similar observations which were included in the committee's December 14 letter.

COMMENT 2: Mr. McKenzie submitted substantial commentary regarding his concerns over the proposed simplification of the Manual from the 2015 version. Mr. McKenzie believes an overall revision of the publication was unnecessary and claims the intent of the Manual is to guide both appraisers and taxpayers in the application of the rules and law in the complex process of valuation of forest land. Mr. McKenzie contends that manuals are intended to be technical and contain technical details to support complex processes. He suggested that the department could create a separate document for the public if a layperson's guide to forest land classification and valuation was deemed necessary.

RESPONSE 2: The Montana Forest Land Classification and Valuation Manual was originally written to aid the department's staff in understanding the implementation and assessment of private forest land in Montana. The original manual was intended to be simple and informative. In 2009, manual updates included technical and scientific language and information. Since 2009, the department has observed that the audience for the manuals has expanded beyond the industry and includes a greater number of property owners, researchers, and the general public. The information proposed for removal from the 2015 manual was found in the History, Forest Land Tax Act, Forest Productivity, and Potential Productivity Classification System sections of the 2009 manual. While this information is very informative and

explains how the current productivity model was developed, the information itself is not needed for the current forest appraisal process.

The department does agree with Mr. McKenzie that the information contained in pages 5 and 6, and 9 through 12 of the 2015 manual has value. Based on these comments, the department will revise the Manual upon adoption by including the 2015 manual content with minor, but necessary, revisions as an addendum to the Manual.

COMMENT 3: Mr. McKenzie commented that the 2015 manual's history, detail on the productivity classification system, tax classification process, and land eligibility review dates are critical information to both appraisers and taxpayers that simply do not exist elsewhere. Mr. McKenzie also states that if this historical information is removed and not carried forward in future manual versions, it will exist only in archives, which puts the taxpayer and the department at a disadvantage due to lack of access to the information.

The committee concurs with Mr. McKenzie that the historical information of the 2015 manual should be maintained and carried forward in future manuals.

RESPONSE 3: The department directs Mr. McKenzie and the committee to the second paragraph of Response 2 and the incorporation of an addendum to the Manual.

COMMENT 4: Based on the department's verbal agreement to reinstate 2015 manual content described in Responses 2 and 3, the committee gave its overall approval of the Manual during its December 7, 2020 meeting.

RESPONSE 4: The department appreciates and thanks the committee for expediting its meeting schedule, for its discussions and recommendations on forest land valuation policy, for its input regarding this rulemaking and the Manual, and for its overall policy support as the department prepares for the upcoming valuation cycle.

COMMENT 5: Mr. McKenzie commented that the eligibility checklist that resided on page 13 of the 2015 manual is a valuable resource. He suggests the department continue the summary checklist in addition to the checklist's content, which is continued in the 2015 manual.

RESPONSE 5: The checklist described by Mr. McKenzie contains the same information found in the Forest Land Eligibility Requirements section. Consistent with the department's goal to remove unnecessary redundancies in its publications, the department removed the checklist in favor of subsection titles in the Eligibility section. The relevant content remains intact even though the checklist has been removed.

COMMENT 6: Mr. McKenzie commented that he believes there are errors and certain ambiguities in the Manual. He provided examples related to the department's explanations or descriptions of tree species, stocking rate, minimum productivity for productive forest land, cubic foot measurement referencing, restrictions and easements, valuation zone realignments, and application date references.

RESPONSE 6: The department agrees with Mr. McKenzie that in the Tree Species section adding the words "Examples of . . ." to the second paragraph on page 4 provides clarity that this is not an all-inclusive list of the commercial tree species, and based on these comments, the department will revise the Manual accordingly upon adoption.

The department concurs with Mr. McKenzie that adding the words "by crown cover" in the first sentence of the Stocking Rate section provides clarity and the department will revise the Manual accordingly upon adoption.

The department concurs with Mr. McKenzie's comment regarding the incorrect item reference in ARM 42.20.701 and the department will revise the Manual upon adoption to reflect the recently amended version of ARM 42.20.701.

The department appreciates Mr. McKenzie's comments regarding establishing a minimum productivity and the cubic foot measurement and conversion rate. However, the minimum annual net wood production requirement is stated in 15-44-102, MCA, in cubic feet an acre. The department administers this in board feet per acre and the stated conversion factor is part of the productivity model developed by the University of Montana – College of Forestry.

The department thanks Mr. McKenzie and agrees with his comments regarding the simplification of the Productivity section. The department directs Mr. McKenzie to its response in the second paragraph of Response 2 regarding the new Manual addendum which reinstates much of this content.

The department appreciates Mr. McKenzie's comments regarding the 'Restrictions and Easements' section. The department will modify the Manual upon adoption by striking this example.

The department appreciates Mr. McKenzie's comments regarding limited reference to the committee in the Manual. However, the committee's scope of authorization and its responsibilities are covered in sufficient detail in 15-44-103, MCA, and any substantive discussion in the Manual would be redundant and potentially contradictory to what each appointed committee sees in its advisory role to the department.

The department understands Mr. McKenzie's concerns on the importance of including the filing deadlines for the natural disaster reduction and request for classification review. However, these dates are both statutory and in administrative

rule and the variance of circumstances makes it difficult to reliably include those dates in a reference like a manual. For instance, when a taxpayer files a natural disaster reduction and request for classification review, those requests are filed on the Request for Informal Classification and Appraisal Review form (AB-26), which has specific filing dates stated on the form, pursuant to 15-7-102, MCA. Further, the effective date for the natural disaster reduction begins with the year after the filing, as per ARM 42.20.740, rendering the month of the filing of no concern. For these reasons, the department declines to make the changes as requested.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State December 31, 2020.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rules I through IV and the) AMENDMENT
amendment of ARM 42.15.802,)
42.15.803, 42.15.804, and 42.15.805)
pertaining to Montana Achieving a)
Better Life Experience (ABLE))
program accounts and family)
education plan savings accounts)

TO: All Concerned Persons

1. On November 20, 2020, the Department of Revenue published MAR Notice No. 42-1026 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 2116 of the 2020 Montana Administrative Register, Issue Number 22.

2. On December 14, 2020, a public hearing was held via videoconference to consider the proposed adoption and amendment. No proponents were present, no proponent oral testimony was received, and the department received no written comments in direct support. The following person was present but did not provide oral testimony: Marsha Goetting, Montana State University, Extension Office.

3. The department has adopted New Rule I (42.15.1001), New Rule II (42.15.1002), New Rule III (42.15.1003), and New Rule IV (42.15.1004) as proposed.

4. The department has amended ARM 42.15.802, 42.15.803, 42.15.804, and 42.15.805 as proposed.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State December 31, 2020.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.25.1801 pertaining to)
revisions to definitions of oil stripper)
well bonus and stripper well)
exemption)

TO: All Concerned Persons

1. On November 20, 2020, the Department of Revenue published MAR Notice No. 42-1027 pertaining to the proposed amendment of the above-stated rule at page 2128 of the 2020 Montana Administrative Register, Issue Number 22.
2. The department has amended the above-stated rule as proposed.
3. No requests for a public hearing or comments were received.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State December 31, 2020.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.12.204 pertaining to the)
payment threshold--inflation)
adjustment for lobbyists)

TO: All Concerned Persons

1. On November 20, 2020, the Commissioner of Political Practices published MAR Notice No. 44-2-241 pertaining to the proposed amendment of the above-stated rule at page 2131 of the 2020 Montana Administrative Register, Issue Number 22.

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

3. No comments or testimony were received.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Jeffrey Mangan
Jeffrey Mangan
Commissioner

Certified to the Secretary of State December 31, 2020.

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

In the matter of NorthWestern) REGULATORY DIVISION
Energy's Petition for a)
Declaratory Ruling Regarding) DOCKET NO. 2020.09.097
Community Renewable Energy)
Projects—Storage-Only)

DECLARATORY RULING

PROCEDURAL HISTORY

1. On September 16, 2020, NorthWestern Corporation d/b/a NorthWestern Energy (NorthWestern) filed a Petition for a Declaratory Ruling Regarding Community Renewable Energy Projects—Storage-Only (Petition) with the Montana Public Service Commission (Commission).

2. On October 7, 2020, the Commission provided interested parties the opportunity to comment on the Petition. The Commission received comments from the Uda Law Firm (Uda Law) on October 27, 2020, a Conjoined Motion for Default Order and Brief in Support from NorthWestern on November 5, 2020, a response to NorthWestern's Motion from Uda Law on November 24, 2020, and a reply to Uda Law's comments from NorthWestern on December 8, 2020.

3. During a regularly scheduled work session on December 18, 2020, the Commission approved NorthWestern's Petition, as discussed below.

DISCUSSION

I. Standard of Decision

4. NorthWestern can request a Commission declaratory ruling to determine how a statute, Commission regulation, or Commission order affects NorthWestern's legal rights. Mont. Code Ann. § 2-4-501 (2019); Mont. Admin. R. 1.3.226; Mont. Admin. R. 38.2.101. The purpose of declaratory relief is "to liquidate uncertainties and controversies which might result in future litigation and to adjudicate rights of parties who have not otherwise been given an opportunity to have those rights determined." *In re Dewar*, 169 Mont. 437, 444, 548 P.2d 149 (1976). Declaratory judgments should not substitute for otherwise available remedies. *Id.*; *In re Gildersleeve*, 283 Mont. 479, 484, 942 P.2d 705 (1997).

5. The Commission can either deny or approve the petition. If denied, the Commission must explain why it was denied. Mont. Admin. R. 1.3.228. If approved, the declaratory ruling is binding between the Commission and NorthWestern regarding the facts presented. Mont. Admin. R. 1.3.229(1). Any Commission

decision, whether approval or denial, is a final agency decision subject to judicial review under Mont. Code Ann. § 2-4-701 through -711. Mont. Admin. R. 1.3.229(2).

6. The Commission interprets statutes by their plain meaning. *Lucas Ranch, Inc. v. Mont. Dep't of Revenue*, 2015 MT 115, ¶ 15, 379 Mont. 28, 347 P.3d 1249. The Commission must "ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars [in a statute], such a construction is, if possible, to be adopted as will give effect to all." Mont. Code Ann. § 1-2-101.

7. If the plain language of the statute is ambiguous, the Commission looks to extrinsic aids such as legislative history to inform interpretation of the statute. See, e.g., *Nelson v. City of Billings*, 2018 MT 36, ¶ 16, 390 Mont. 290, 412 P.3d 1058; *State v. Gregori*, 2014 MT 169, ¶ 13, 375 Mont. 367, 328 P.3d 1128. However, the Commission ignores legislative history when the statute is unambiguous. *McGree Corp. v. Mont. PSC*, 2019 MT 75, ¶ 16, 395 Mont. 229, 438 P.3d 326. Statutory construction should also "not lead to absurd results if a reasonable interpretation can avoid it." *Mont. Sports Shooting Ass'n, Inc. v. Mont. FWP*, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003.

II. Party Positions

8. NorthWestern attributes its Petition to several proposals for "battery-only resources without any physical connection to any renewable resource" that NorthWestern received in response to its Request for Proposals of May 1, 2020, for Community Renewable Energy Projects (CREPs). Pet. ¶¶ 5-6. NorthWestern seeks confirmation from the Commission that (1) storage-only resources cannot qualify as CREPs; and (2) storage resources must be coupled with one or more of the other resources in Mont. Code Ann. § 69-3-2003(10)(a)-(h) in order for their respective renewable energy fractions to be considered eligible renewable resources. Pet. at 4.

9. NorthWestern represents that an eligible renewable resource must produce electricity from one or more of the following resources: (1) wind; (2) solar; (3) geothermal; (4) certain water power; (5) landfill or farm-based methane gas; (6) gas produced during the treatment of wastewater; (7) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues; (8) hydrogen derived from any of the sources listed in § 69-3-2003(10) for use in fuel cells; and (9) the renewable energy fraction from storage-type resources, including batteries. *Id.* ¶ 17, citing Mont. Code Ann. § 69-3-2003 (10). Similarly, NorthWestern points to statute that defines "renewable energy fraction" as "the proportion of electricity output directly attributable to electricity and associated renewable energy credits produced by one of the sources listed in subsection (10)." *Id.* ¶ 18, citing Mont. Code Ann. § 69-3-2003(15).

10. NorthWestern states that while energy storage devices may be listed in § 69-3-2003(10)(i), they are only listed with respect to the renewable energy fraction associated with power directly attributable to the other renewable resources identified in subsection (10). *Id.* ¶ 19. Accordingly, if storage-only resources qualified as CREPs, NorthWestern states there would be no need to analyze the renewable energy fraction from the other resources and the corresponding statutory provisions would be superfluous. *Id.* ¶ 20. To give effect to all provisions in Mont. Code Ann. § 69-3-2003 and to avoid omitting the reference to renewable energy fraction, NorthWestern notes the Commission "should find that storage-only resources do not constitute eligible renewable resources and, likewise, cannot qualify as CREPs." Pet. at 4.

11. Uda Law states that the Commission must deny NorthWestern's Petition because it is contrary to the CREP statute's language and disregards the intent of the Legislature, which was to add batteries, along with other types of energy storage facilities, to the definition of "eligible renewable resource" in order to allow storage-only projects to qualify as CREP resources. Comment at 2.

12. Uda Law contests NorthWestern's argument that storage-only facilities "are only listed with respect to the renewable energy fraction associated with power directly attributable to the other renewable resources in subsection (10)" because the argument impermissibly inserts words into the statute, inasmuch as the word "other" does not appear in the statutory definition of "renewable energy fraction." *Id.* at 2-3. Uda Law argues that the statutory definition of "renewable energy fraction" simply states, "produced by one of the sources listed in subsection (10)," and that storage facilities are listed as a source in subsection (10) and they provide "electricity output." *Id.* at 3, *citing* ¶¶ 69-3-2003(10)(i) and (15). Uda Law states that "a plain language reading of the statute supports storage-only facilities qualifying as eligible CREP resources, and the Commission should deny NorthWestern's petition on these grounds alone." *Id.*

13. Uda Law argues that the definition of "eligible renewable resource" in subsection (10) is ambiguous, thus it is necessary to review legislative history to determine the Legislature's intent. *Id.* at 2-3. Uda Law cites both House and Senate committee hearings for Senate Bill 106 (SB 106), as well as statements made in second reading of the bill on the House floor, for the proposition that the Montana Legislature specifically amended the CREP statutes to include several other storage-only facilities in the definition of eligible renewable resources, making it clear the Legislature intended to allow storage-only resources to qualify as eligible CREP resources. *Id.* at 3-5.

14. Uda Law states that the Commission supported SB 106 in both Senate and House hearings, with one Commissioner stating there was "a unanimous vote by the Commission that [SB 106] is a needed identifying of the storage as a renewable resource." *Id.* at 5. Uda Law states that the Commission, in supporting SB 106, "publicly supported the passage of this bill to allow for additionally [sic] storage-only facilities to qualify as eligible CREP resources." *Id.* at 6.

15. NorthWestern argues that Uda Law's arguments obscure the rules of statutory construction by failing to interpret the statute as a whole and by omitting clear statutory language, including an express definition provided by the Legislature. Conjoined Mot. at 5, *citing* Mont. Code Ann. § 1-2-101; *S.L.H. v. State Compensation Mut. Ins. Fund*, 2000 MT 362, ¶¶ 16-17, 303 Mont. 264, 15 P.3d 948; *Boettcher v. Montana Guar. Fund*, 2007 MT 69, ¶ 19, 336 Mont. 393, 154 P.3d 629; *State ex. Rel. Long v. Justice Court, Lake County*, 2007 MT 3, ¶ 8, 335 Mont. 219, 156 P.3d 5; Mont. Code Ann. § 1-2-107; *Stratemeyer v. Lincoln County*, 276 Mont. 67, 78-79, 915 P.2d 175, 181-182 (1996). NorthWestern asserts that Uda Law's interpretation would further lead to an absurd result by allowing any storage device identified in § 69-3-2003(i) to qualify as an eligible renewable resource, even if the electricity output is attributed to non-renewable resources. *Id.* at 5.

16. NorthWestern states that the plain statutory language resolves the issue, inasmuch the Legislature adopted the "Montana Renewable Power Production and Rural Economic Development Act" to promote the development of "renewable energy production." *Id.* at 5-6, *citing* Mont. Code Ann. §§ 69-3-2001, -2002 (emphasis added by NorthWestern). NorthWestern argues that Uda Law's interpretation of the statutes would allow storage resources with electricity output attributable to non-renewable resources to qualify as eligible renewable resources. *Id.* at 7.

17. NorthWestern asserts that, contrary to the Uda Law's assertion, the inclusion of the word "other" in NorthWestern's characterization is simply a function of reading the statute as a whole and interpreting § 69-3-2003(10)(i) in coordination with the other provisions in the statute. *Id.* NorthWestern also argues that Uda Law's interpretation would omit both the Legislature's express preface to § 69-3-2003(10)(i), which allows only the "renewable energy fraction" from storage facilities to qualify as eligible renewable resources, and the statute's express definition of "renewable energy fraction." *Id.* at 6-7. NorthWestern further reasons that if storage-only facilities qualified as eligible renewable resources on their own, there would be no need to analyze the renewable energy fraction and apportion the electricity output from the storage devices because they would automatically qualify as being listed in § 69-3-2003(10). *Id.* at 7.

18. Uda Law replies that, with regard to NorthWestern's argument that the qualification of a storage-only device as an eligible renewable resource would obviate the need to analyze the renewable energy fraction of that device, "the opposite is true." Uda Law asserts that "if storage-only resources were indeed ineligible as renewable resources on their own, there would be no need to analyze the renewable energy fraction and apportion the electricity output from the storage resources because 100% of the stored energy would be provided by the renewable generation resource." Resp. at 5. Further, if "it were the case that storage resources were only intended to be charged directly from renewable generation resources, then 100% of their stored energy would be from renewable energy and there would be no 'renewable energy fraction' to calculate." *Id.* Uda Law concludes that "under

the plain language of the Act, a storage facility does not have to be directly tied to a renewable generation source, it just has to be able to trace the energy that it is relying on to charge its facility." *Id.* at 6.

19. Uda Law argues that the Legislature explicitly used the term "proportion of electricity output" in the definition of "renewable energy fraction" to ensure that storage-only facilities were being credited only for the "proportion of electricity output" that is "directly attributable to . . . one of the [generation] resources listed in subsection (10)." *Id.* at 7 (emphasis added by Uda Law). Uda Law interprets this to mean that the Legislature intended for storage-only facilities to qualify for CREP benefits provided that the electricity output from the batteries could be analyzed and apportioned to renewable generation sources. *Id.*

20. Uda Law asserts that the CREP statute's reference to the "proportion of electricity output" acknowledges that standalone battery systems may not always be charged by renewable resources and may be charged by traditional sources during times of low load and high supply. *Id.* at 6, *citing* § 69-3-2003(10).

21. NorthWestern replies that Uda Law's Response now appears to support NorthWestern's position. Repl. at 2 (*citing* Uda Law's Resp. at 6, where Uda Law states that in order to qualify as an eligible renewable resource, the resource must "be able to trace the energy that it is relying on to charge its facility."). NorthWestern also modified its Petition to request the Commission find that: (1) storage-only resources cannot qualify as CREPs under Montana law; and (2) storage resources listed under Montana Code Ann. § 69-3-2003(10)(i) must be coupled with or prove that their electricity output derives from one or more of the other resources identified in § 69-3-2003 (10)(a)-(h) in order for their respective renewable energy fractions to be considered as eligible renewable resources. *Id.* at 6.

III. Commission Decision

22. NorthWestern's first request asks the Commission to declare that storage-only resources cannot qualify as CREPs under Montana law. NorthWestern bases the request on its receipt of "several proposals for battery-only resources without any physical connection to any renewable resource." Pet. at 4. The Commission notes that the terms "storage-only," "battery-only," and "standalone battery" are not defined in statute, though both NorthWestern and Uda Law utilize these terms interchangeably, yet without apparent agreement on their definitions. The Commission will analyze this issue with the understanding that a "storage-only" or "battery-only" resource is "a storage facility that has no proof of the source of its electricity output."

23. The Commission agrees with NorthWestern and declares that battery-only resources, without any proof of a renewable fraction attributable to a renewable

source, cannot be certified as an "eligible renewable resource" under Mont. Code Ann. § 69-3-2003(4).

24. Mont. Code Ann. § 69-3-2003(4) requires a CREP to be an eligible renewable resource. Relevant to this Petition, an "eligible renewable resource" must produce electricity from a "renewable energy fraction." Mont. Code Ann. § 69-3-2003(10), (10)(i). A "renewable energy fraction" can be derived from "batteries." Mont. Code Ann. § 69-3-2003(10)(i)(iv). A "renewable energy fraction" requires the ability to directly attribute the electricity and renewable energy credits produced by a source in -2003(10). Mont. Code Ann. § 69-3-2003(15).

25. The Commission finds that the definition of "renewable energy fraction" is ambiguous, insofar as the requirement in § 69-3-2003(15) that such a fraction be "produced by one of the sources identified in subsection (10)" creates a circular logic in that a renewable energy fraction is itself listed as one of the sources. Nonetheless, the Commission finds that the statute clearly defines a renewable energy fraction as "the proportion of electricity output directly attributable to electricity and associated renewable credits . . ." The Commission finds in this element of the definition an unmistakable and necessary linkage between a renewable energy fraction and a source of energy that demonstrably produces renewable energy credits.

26. Uda Law's legislative history appears to support the Commission's findings. Uda Law argues that the Legislature explicitly used the term "proportion of electricity output" in the definition of "renewable energy fraction" to ensure that storage-only facilities were being credited only for the proportion of electricity output that is "directly attributable to . . . one of the sources listed in subsection (10)." Uda Law interprets this to mean that the Legislature intended for storage-only resources to qualify for CREP benefits, provided that the electricity output from the batteries could be analyzed and apportioned to renewable generation resources. Resp. at 7.

27. In the Senate, the bill initially was introduced with flywheel storage, hydroelectric pumped storage, and batteries each listed as a separate source from which an eligible renewable resource could produce electricity. SB 106_1, Mont. 63rd Leg. Sess. The introduced version of SB 106 also listed as a source the "renewable energy fraction from the sources identified in subsections (10)(a) through (10)(m) of electricity production from a multiple-fuel process with fossil fuels."

28. The Senate Energy and Telecommunications Committee questioned the bill's sponsor regarding how RECs would be counted for storage sources. Sen. Energy and Tel. Hearing, 16:14:50–16:22:02 (Jan. 29, 2013). The sponsor admitted that it was a difficult issue, as he was trying to carve out capacity credits in a section of statute that is focused on energy output rather than capacity. *Id.* at 16:21:07. Committee members expressed concern about minimizing the potential double-counting of renewable energy credits and voted to amend the bill to make the "source" the "renewable energy fraction" from flywheel storage, hydroelectric pumped storage, batteries, and compressed air. The Senate Energy Committee

amendment also defined "renewable energy fraction" as "the proportion of electricity output directly attributable to electricity and associated renewable energy credits produced by one of the sources identified in subsection (10)." SB 106_2, Mont. 63rd Leg. Sess.

29. It is clear from the legislative history that the Legislature passed SB 106 to promote the development of storage resources. The Legislature also placed language in the statute so that the "eligible renewable resource" is the renewable energy fraction from the storage facility.

30. The Commission concludes that a storage facility does not qualify as an eligible renewable resource merely because its output comes from a storage facility. The statute should not be read in a circular fashion to allow the renewable energy fraction—which is defined as the proportion of output from a source identified in Mont. Code Ann. § 69-3-2003(10)—from storage facilities to always be 100% of the storage facility's output, since the renewable energy fraction is itself a source listed in Mont. Code Ann. § 69-3-2003(10). Such automatic eligibility undermines the purpose of the statute.

31. Accordingly, the Commission finds that storage-only facilities that cannot prove that a renewable energy fraction is attributable to a renewable source cannot qualify as CREP under Montana law.

32. NorthWestern also asks the Commission to declare that storage resources must be coupled with one or more of the other sources in Mont. Code Ann. § 69-3-2003(10)(a)-(h) in order for their respective renewable energy fractions to be considered eligible renewable resources. Pet. at 4; Repl. at 6.

33. The Commission declares that the renewable energy fraction stored in a battery device can be certified as an eligible renewable resource, so long as it comprises electricity directly attributable to electricity and associated renewable energy credits produced by one of the sources identified in subsection (10)(a)-(h). Mont. Code Ann. § 69-3-2003(15). This declaration logically follows from the Commission's first; however, subsequent Commission CREP proceedings would be necessary to determine whether any given battery proposal could satisfy this fact-specific inquiry.

DONE AND DATED this 18th day of December, 2020, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

/s/ BOB LAKE
Bob Lake
Chairman

/s/ BRAD JOHNSON
Brad Johnson
Vice Chair

/s/ROGER KOOPMAN
ROGER KOOPMAN
Commissioner

/s/ TONY O'DONNELL
Tony O'Donnell
Commissioner

/s/ RANDY PINOCCI
Randy Pinocci
Commissioner

ATTEST:

Amber Koop
Commission Assistant
(SEAL)

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|---------------|--|
| Known Subject | 1. Consult ARM Topical Index.
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2020. This table includes notices in which those rules adopted during the period July 24, 2020, through December 24, 2020, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 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.

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- 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

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