

# MONTANA ADMINISTRATIVE REGISTER

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PAGES 378-446



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 7

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PROPOSED  
2.11.203 pertaining to the adoption of a ) AMENDMENT  
state plan of operation for federal )  
surplus property ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Concerned Persons

1. On July 10, 2021, the Department of Administration proposes to amend 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 April 30, 2021, to advise us of the nature of the accommodation that you need. Please contact Tama Lutsko, Department of Administration, 16 W. Custer Avenue, Helena, Montana, 59601; telephone (406) 431-3104; TDD (406) 444-1421; or e-mail doasurplusproperty@mt.gov.

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

2.11.203 ADOPTION OF STATE PLAN OF OPERATION–FEDERAL SURPLUS PROPERTY (1) As authorized by 18-5-202, MCA, the department adopts and incorporates by reference the "~~State of Montana~~, Federal Surplus Property Program Montana State Plan of Operation" in ~~Compliance~~ compliance with ~~41 FR 101-44~~ 41 CFR 102-37 and Public Law 94-519" (State Plan of Operation) promulgated by the department and filed with the General Services Administration of the United States government on July 1, 1977, and as revised ~~March 19, 1984~~ February 23, 2021, pursuant to section ~~204~~203(j)(4) of the Federal Property and Administrative Services Act of 1949 (40 USC 484) as amended.

(2) The State Plan of Operation establishes the operating procedure and practices to be followed by the department for the fair and equitable distribution of federal surplus personal property ~~to those units of state and local government and certain nonprofit, tax-exempt, educational, and health institutions as are determined to be eligible to receive such surplus personal property under section 203(j) of the act~~ to all eligible participants within the state.

(3) Copies of the State Plan of Operation may be obtained from the Department of Administration, General Services Division, P.O. Box 200137, Helena, Montana 59620-0137.

AUTH: 18-5-202, MCA  
IMP: 18-5-202, MCA

STATEMENT OF REASONABLE NECESSITY: The federal General Services Administration (GSA) reviewed the "Federal Surplus Property Program Montana State Plan of Operation" (State Plan of Operation) and recommended that the department update the plan. The department drafted a State Plan of Operation in compliance with 41 CFR 102-37 and Public Law 94-519 to comply with current federal management regulations and is now seeking comments from the public regarding the revised State Plan of Operation. To encourage public review and comment, an electronic copy of the State Plan of Operation may be viewed online at State Plan of Operations for the Federal Surplus Property Program.

The revised State Plan of Operation removes the appendices "Application for the Federal Surplus Property Program" and "Eligibility Update and Renewal Application," as recommended by GSA to allow the department to amend the application forms without seeking prior approval from GSA. If the applications remain in the State Plan of Operation, the department will be required to request GSA's approval before the forms could be amended. This would increase the administrative burden on both GSA and the department.

In addition to proposing revisions to the State Plan of Operation, the department proposes to amend (1) to match the title as shown on the first page of the State Plan of Operation. The department also proposes to correct and update citations to the federal regulations cited in (1). The department proposes to amend (2) to broaden the class of potentially eligible participants to match the "eligible participants" language used in 18-5-202, MCA. Using the broader terminology from statute will afford the department flexibility to adapt to changes in eligibility criteria at the federal level without requiring a corresponding change in administrative rule.

After the public comment period closes, the department will review all comments received and determine whether the State Plan of Operation or the administrative rules should be revised. The State Plan of Operation, including any proposed revisions, will then be submitted to GSA for approval. If GSA approves the State Plan of Operation, the department will formally adopt the plan and amend the administrative rules accordingly.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Tama Lutsko, Department of Administration, P.O. Box 200137, Helena, Montana, 59620; telephone (406) 431-3104; or e-mail [doasurplusproperty@mt.gov](mailto:doasurplusproperty@mt.gov), and must be received no later than 5:00 p.m., May 17, 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 the person listed in 4 at the above address no later than 5:00 p.m., April 30, 2021.

6. If the General Services Division receives requests for a public hearing on the proposed action from either 10% 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 has been determined to be 45 persons based on the list of interested persons the division maintains.

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

9. The 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 amendment will not significantly and directly affect small businesses.

By: /s/ Misty Ann Giles  
Misty Ann Giles, Director  
Department of Administration

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

Certified to the Secretary of State April 6, 2021.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PROPOSED ADOPTION
RULE I pertaining to examination fees	)	AND AMENDMENT
and the amendment of ARM	)	
2.59.1707, 2.59.1709, 2.59.1730,	)	NO PUBLIC HEARING
2.59.1731, 2.59.1737, 2.59.1751, and	)	CONTEMPLATED
2.59.1753 pertaining to revocation and	)	
suspension of mortgage licenses,	)	
consumer complaints, confidentiality	)	
agreements and sharing	)	
arrangements, reinstatement of expired	)	
or suspended licenses, mortgage loan	)	
origination disclosure form, bona fide	)	
not-for-profit certification, and	)	
applications for initial licenses near	)	
year end	)	

TO: All Concerned Persons

1. On May 29, 2021, the Department of Administration proposes to adopt and amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on April 28, 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](mailto:banking@mt.gov).

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

NEW RULE I EXAMINATION FEES (1) A mortgage lender, broker, or servicer shall pay to the department the actual cost of any examination or investigation which must include expenses for necessary travel for the purposes of conducting the examination or investigation.

AUTH: 32-9-130, MCA  
IMP: 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-130(8)(a), MCA, requires the department to adopt rules to set fees commensurate with the cost of the examination or investigation which may include expenses for necessary travel outside the state. The current practice of the department has been to collect these



fees at the time of examination as described in statute. This proposal reflects current practice and is intended to formally incorporate it into rule. Currently, there are 211 mortgage broker entities, 236 mortgage lender entities, and 186 mortgage servicer entities licensed in Montana. Because the department has already been collecting these fees for examination expenses as described in statute, the department does not anticipate any fiscal impact to the department or licensees as a result of adopting this rule.

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

2.59.1707 REVOCATION, SUSPENSION, OR SURRENDER OF LICENSE

(1) The department may suspend or revoke a license for a violation of the Montana Mortgage Act, this subchapter, or for any other violation of state or federal law pertaining to licensees or residential mortgage loans.

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

AUTH: 32-9-130, MCA

IMP: 32-9-126, 32-9-130, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: As part of its required biennial review of rules, the department has identified necessary changes identified in these proposed amendments. Some of the proposed amendments are technical in nature, such as amending punctuation or updating authority and implementation citations to accurately reflect all statutes implemented through the rules and to provide the complete sources of the department's rulemaking authority. The department is changing references to the Division of Banking and Financial Institutions of the Department of Administration from "division" to "department" for consistency with other rules in ARM Title 2, chapter 59. The department proposes updating website references to remove "www" and "http" as these prefixes are not generally necessary to successfully navigate to the department's website. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

STATEMENT OF REASONABLE NECESSITY: The department proposes to insert (1) to clarify that licenses may be suspended or revoked for any violation of the Montana Mortgage Act and related requirements. Under 32-9-130, MCA, the department is required to adopt rules regarding suspension and revocation of licenses, and this amendment describes the scope of acts or omissions that may result in suspension or revocation of a license.

2.59.1709 CONSUMER COMPLAINT PROCESS (1) ~~A complaint form is provided by the department at <http://www.banking.mt.gov>.~~ A complaint form must be submitted in writing to the department. If the basis of the complaint relates to the Montana Mortgage Act, it will be investigated by the department ~~or designated party~~.

(2) The Complaint Form dated January 23, 2020, is adopted and incorporated by reference and available on the department's website at [banking.mt.gov](http://banking.mt.gov).

AUTH: 32-9-130, MCA

IMP: 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: To avoid confusion, the department proposes amending the catchphrase to clarify that the process described in the rule applies to all complaints against mortgage licensees, not just those submitted by consumers.

The department proposes to amend (1) to move the website address for the complaint form to (2) and clarify that the department investigates complaints related to the Montana Mortgage Act. When this rule was adopted in 2004, other agencies may have addressed mortgage complaints, but now they are the responsibility of the department.

The department proposes to add (2) to formally adopt the complaint form, which has been used for years but not been formally adopted into rule. Complaints must be submitted on the complaint form because the form provides complainants important information about the complaint process and ensures the department and complaint respondent have sufficient information to investigate and respond to the complaint.

2.59.1730 CONFIDENTIALITY – AGREEMENTS AND SHARING ARRANGEMENTS (1) In addition to the trade associations specifically named in 32-9-160(23), MCA, the department may enter into agreements or sharing arrangements allowing the sharing of information and material with the following governmental agencies and associations representing governmental agencies:

(a) through (g) remain the same.

AUTH: 32-9-130, 32-9-160, MCA

IMP: 32-9-160, MCA

STATEMENT OF REASONABLE NECESSITY: During the 2019 legislative session, House Bill 107 included a new section to 32-9-160, MCA, resulting in section (2) becoming section (3). Section (3) grants authority to the department to "enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or associations representing governmental agencies as established by rule of the department."

2.59.1731 REINSTATEMENT OF EXPIRED OR SUSPENDED LICENSES

(1) through (2) remain the same.

(3) If a "Terminated-Expired" status of the license of a military member or reservist was the result of the licensee being on active duty status at the time of renewal, the license may be reinstated, if within 30 days of the licensee's discharge from active duty status, the department receives through NMLS an acceptable

sponsorship request from the licensee's employing mortgage broker or mortgage lender and it receives outside of the NMLS renewal process within that 30-day period, the following:

(a) a properly completed ~~paper renewal application~~ Mortgage Loan Originator License Renewal or Reinstatement Form available on the department's website at [banking.mt.gov](http://banking.mt.gov);

(b) remains the same.

~~(c) the NMLS fee;~~

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

(4) remains the same.

AUTH: 32-9-130, ~~32-9-134~~, MCA

IMP: 32-9-120, 32-9-126, 32-9-134, MCA

STATEMENT OF REASONABLE NECESSITY: All mortgage licenses expire on December 31 if they are not renewed by that date. The last day a licensee is able to reinstate a license that was not renewed by December 31 is the last day of February. Beginning March 1, a person holding a lapsed license is directed to reapply for licensure. However, the department allows a military member or reservist on active duty status at the time of renewal to reinstate their license within 30 days of their discharge date. Since the NMLS cannot accommodate this situation, the department must process the reinstatement outside of the NMLS. The department proposes to amend (3) to properly identify the name of the form and formally adopt it into rule. Furthermore, since the reinstatement is not being processed through the NMLS, an NMLS fee is not applicable.

Currently, there are 4,569 mortgage loan originators licensed in Montana. Since the removal of (3)(c) pertains to a separate NMLS fee that is no longer assessed, the department does not anticipate any fiscal impact to the department or licensees as a result of amending this rule.

2.59.1737 MONTANA MORTGAGE LOAN ORIGINATION DISCLOSURE FORM (1) Licensees shall use a form that is substantially similar to ~~this and the Mortgage Loan Origination Disclosure form dated September 23, 2011, which is available on the department's website at [banking.mt.gov](http://banking.mt.gov)~~. Licensees may customize the form to meet their individual needs.

#### MORTGAGE LOAN ORIGINATION DISCLOSURE

~~(Name of mortgage loan originator) is a Montana-licensed mortgage loan originator employed by a Montana-licensed entity who is authorized to provide mortgage loan origination services to (borrower and co-borrower(s) name — printed) in connection with your Montana residential mortgage loan. Lender(s) whose loan products (name of entity) distributes generally provide their loan products to (name of entity) at a wholesale rate.~~

~~SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan:~~

1. ~~(name of entity) is acting as an independent contractor and not as your agent;~~
2. ~~(name of entity) enters into separate independent contractor agreement(s) with one or more lender(s); and~~
3. ~~while (name of entity) seeks to assist you in meeting your financial needs, (name of entity) does not distribute products of every lender(s) or investor(s) in the market and cannot guarantee the lowest price or best terms available in the market.~~

~~SECTION 2. OUR COMPENSATION.~~

1. ~~The retail price (name of entity) offers you may include (name of licensee's) compensation.~~
2. ~~If you would rather pay a lower interest rate, you may pay higher up-front costs.~~
3. ~~If you would rather pay less up front, you may pay all of (name of entity's) compensation indirectly through a higher interest rate in which case (name of entity) will be paid by the lender.~~
4. ~~If you compensate (name of entity) directly, (name of entity) cannot be compensated by any other person for the same transaction.~~

~~By signing below, you acknowledge that you have received a copy of this disclosure.~~

\_\_\_\_\_  
BORROWER \_\_\_\_\_ DATE \_\_\_\_\_

\_\_\_\_\_  
CO-BORROWER \_\_\_\_\_ DATE \_\_\_\_\_

\_\_\_\_\_  
MORTGAGE LOAN ORIGINATOR \_\_\_\_\_ NMLS # \_\_\_\_\_ DATE \_\_\_\_\_

\_\_\_\_\_  
Employing Entity \_\_\_\_\_ NMLS # \_\_\_\_\_

~~The State of Montana, Department of Administration, Division of Banking and Financial Institutions (Division), is the licensing agency of mortgage lenders, mortgage brokers, mortgage servicers, and mortgage loan originators. Any consumer with a comment, question, or concern should contact the division by the means listed within this disclosure.~~

~~(2) The disclosure must include the address, phone number, facsimile number, e-mail address, and web-site website of the division department.~~

~~(3) The disclosure must include the unique identifier issued by the Nationwide Mortgage Licensing System and Registry NMLS for the mortgage broker employing entity and mortgage loan originator.~~

~~(4) remains the same.~~

AUTH: 32-9-124, 32-9-130, MCA

IMP: 32-9-124, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend this rule to formally adopt the disclosure form and make it available on the department's website rather than include the language in the rule itself.

The department is amending (3) to reflect the current name of the licensing system which was changed from Nationwide Mortgage Licensing System to Nationwide Multistate Licensing System (NMLS). It is not necessary to include the full name in (3) as NMLS is included in the definition in 32-9-103(34), MCA. In addition, mortgage brokers are no longer the only entity employing MLOs; the language has been amended to encompass any employing entity.

2.59.1751 CERTIFICATE OF BONA FIDE NOT-FOR-PROFIT ENTITY

(1) A bona fide not-for-profit entity shall certify that it meets the exemption in 32-9-104(1)(f), MCA, and shall file with the department ~~It shall use the "Montana Bona Fide Not-For-Profit "BNFP" Certification" form dated August 13, 2013, to make its certification both initially and annually. The "Montana Bona Fide Not-For-Profit Certification" dated August 13, 2013, is adopted and incorporated by this reference. A copy of the "Montana Bona Fide Not-For-Profit Certification" dated August 13, 2013, is available at the Montana Division of Banking and Financial Institutions, 301 S. Park Ave., Suite 301, Helena, Montana, during regular business hours or on the department's web site at~~  
<http://banking.mt.gov/Portals/58/Mortgage/BNFP%20Certification%20Final.pdf>.

(2) The Bona Fide Not-For-Profit "BNFP" Certification form dated December 4, 2020, is adopted and incorporated by reference and available on the department's website at [banking.mt.gov](http://banking.mt.gov).

AUTH: 32-9-104, MCA

IMP: 32-9-103(6), 32-9-104(1), ~~32-9-104(2)~~, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend (1) to require submission of the Bona Fide Not-For-Profit "BNFP" Certification form both initially and annually for certification and create (2) to adopt the updated version of the form into rule and provide the website address where the form is located. This form has been used for years but never formally adopted into rule.

2.59.1753 APPLICATIONS FOR INITIAL LICENSE NEAR YEAR-END;  
WHEN APPLICATION FOR INITIAL LICENSE MAY BE DEEMED ABANDONED

(1) remains the same.

(2) If an applicant is approved for licensure during the license renewal period of November 1 through December 31 and requests issuance of a license immediately, the applicant must submit the following renewal application, as appropriate:

(a) Mortgage Loan Originator License Renewal or Reinstatement Application dated December 9, 2020; or

(b) Mortgage Company/Branch Renewal Form dated December 9, 2020.

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

AUTH: 32-9-120, MCA

IMP: 32-9-120, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend this rule to address the expedited processing of an initial license application for mortgage loan originators, mortgage lenders, mortgage brokers, and mortgage servicers and formally adopt the renewal application forms.

The licensing renewal period for all mortgage licensees is November 1 through December 31. An application for initial license received during the renewal period is deemed an application for licensure for the next calendar year. Department staff will review and process applications during the renewal period as time allows, and if the application is complete, the start date for licensure is the first business day of the subsequent year.

Some applicants request expedited processing of their initial application to have their license issued for the current calendar year. Once approved, the applicants are then due for renewal prior to December 31 of the year of issuance. The NMLS is not designed to accommodate this uncommon licensing situation; therefore, the licensee must renew their license outside of the NMLS by using a renewal form provided by the department. The licensee shall remit payment through the invoicing system in the NMLS.

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [banking@mt.gov](mailto:banking@mt.gov); and must be received no later than 5:00 p.m., May 14, 2021.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 5 above no later than 5:00 p.m., April 28, 2021.

7. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 612 persons based on the combined total of 191 mortgage servicers, 5407 mortgage loan originators, 276 mortgage lenders, and 244 mortgage brokers licensed in this state.

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

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

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

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

By: /s/ Misty Ann Giles  
Misty Ann Giles, Director  
Department of Administration

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

Certified to the Secretary of State April 6, 2021.

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM        )  
12.9.102 pertaining to the policy        )  
regarding the management of black        )  
bear    )

TO: All Concerned Persons

1. On May 10, 2021, at 1:00 p.m., the Fish and Wildlife Commission (commission) will hold a telephonic public hearing via ZOOM meeting platform to consider the proposed repeal of the above-stated rule. 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 way:

(a) Dial by telephone: 1-646-558-8656  
Meeting ID: 869 5491 9216  
Password: 581297

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 commission 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 April 30, 2021, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail [jesssnyder@mt.gov](mailto:jesssnyder@mt.gov).

3. The department proposes to repeal the following rule:

12.9.102 BLACK BEAR POLICY

AUTH: 87-1-301, MCA  
IMP: 87-1-201, 87-1-301, MCA

REASON: Repeal of this rule does not change the current management of black bears in any way nor the enforcement of rules for black bear harvest and field handling.

ARM 12.9.102 was adopted in 1972 and has not been updated since. However, statutes pertaining to black bear management have changed in the interim and supersede the language of this rule. Specifically, while this rule states that black bears are trophy animals and that only the head and hide need to be removed from the field, black bears are presently classified as game animals pursuant to 87-



6-101, MCA, and edible portions of bear meat may not be wasted. In addition, the commission's management of black bears and the department's processes regarding bear conflict management have evolved since this rule was passed in 1972. The rule is outdated and contradicts statute and current management practices.

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Wildlife Division, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail fwpwld@mt.gov, and must be received no later than May 14, 2021.

5. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to jesssnyder@mt.gov.

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

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

/s/ Aimee Hawkaluk  
Aimee Hawkaluk  
Rule Reviewer

/s/ Lesley Robinson  
Lesley Robinson  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State April 6, 2021.

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULES I through III pertaining to the ) PROPOSED ADOPTION  
use of deer or elk urine to mask )  
human odor )

TO: All Concerned Persons

1. On May 13, 2021, at 9:00 a.m., the Fish and Wildlife Commission (commission) will hold a telephonic public hearing via ZOOM meeting platform to consider the proposed adoption and amendment of the above-stated rules. 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 way:

(a) Dial by telephone: 1-646-558-8656  
Meeting ID: 880 8935 4093  
Password: 686533

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 commission 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 April 30, 2021, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail [jesssnyder@mt.gov](mailto:jesssnyder@mt.gov).

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

NEW RULE I IDENTIFIED STATES AND PROVINCES WITH DOCUMENTED OCCURRENCES OF CHRONIC WASTING DISEASE (1) The commission has determined the following states have documented occurrences of Chronic Wasting Disease:

- (a) Arkansas;
- (b) Colorado;
- (c) Illinois;
- (d) Iowa;
- (e) Kansas;
- (f) Maryland;
- (g) Minnesota;
- (h) Mississippi;

- (i) Missouri;
- (j) Montana;
- (k) Nebraska;
- (l) New Mexico;
- (m) New York;
- (n) North Dakota;
- (o) Ohio;
- (p) Oklahoma;
- (q) Pennsylvania;
- (r) South Dakota;
- (s) Tennessee;
- (t) Texas;
- (u) Utah;
- (v) Virginia;
- (w) West Virginia;
- (x) Wisconsin; and
- (y) Wyoming.

(2) The commission has determined the following Canadian provinces have documented occurrences of Chronic Wasting Disease:

- (a) Alberta;
- (b) Quebec; and
- (c) Saskatchewan.

AUTH: 87-1-301, 87-6-221, MCA

IMP: 87-6-221, MCA

NEW RULE II PROCESS FOR IDENTIFYING FACILITIES IN STATES AND PROVINCES THAT PRODUCE URINE ALLOWED FOR THE PURPOSE OF MASKING HUMAN ODOR

(1) The commission recognizes that the criteria in 87-6-221(2), MCA are met by the standards of the Archery Trade Association (ATA) and the Responsible Hunting Scent Association (RHSA). Urine from any approved ATA/RHSA facility is allowed, so long as the ATA/RHSA requirements continue to meet the standard in 87-6-221(2), MCA. Products which meet the ATA/RHSA requirements are designated with an ATA/RHSA marking indicating ATA/RHSA approval on the product packaging for identification by the consumer.

AUTH: 87-1-301, 87-6-221, MCA

IMP: 87-6-221, MCA

NEW RULE III SCENTS APPROVED BY THE COMMISSION FOR ATTRACTING GAME BIRDS AND GAME ANIMALS

(1) Pursuant to 87-6-101, MCA, urine-based and natural glandular scents are approved by the commission for the purposes of attracting game animals and game birds if the scents:

- (a) originate from a state or province not listed in [NEW RULE I]; or
- (b) originate from a facility which is approved by the commission under [NEW RULE II] and display the required marks on the product packaging.

(2) Artificial scents and Responsible Hunting Scent Association-approved natural glandular scents may be used by hunters to attract game animals, except black bears, by spraying or pouring the scent on the ground or other objects.

AUTH: 87-1-301, 87-6-101, MCA

IMP: 87-6-101, MCA

REASON: Chronic Wasting Disease (CWD) is a neurological disease (i.e., transmissible spongiform encephalopathy) afflicting cervids (i.e., deer, elk, moose) spread by prions. CWD is always fatal for cervids, although it is not known to affect humans. Prions are present in many tissues and fluids from cervids like urine and glandular scents, which may influence the spread of CWD if infected material is used either for masking scent or bait. The legislature enacted 87-6-221, MCA, which generally prohibits the use or sale of deer or elk urine to mask human odor if the urine originated in a state or province with documented occurrences of CWD, as determined by the commission. That law also provides a process for the commission to allow deer or elk urine which originated in states with documented occurrences of CWD to be used for the purpose of masking human odor if the facility in which they are produced meets certain requirements. Compliance with these criteria dramatically limits risk of spreading CWD. This rule would allow use of urine from facilities which are certified by the Responsible Hunting Scent Association to meet the criteria identified in statute. Similarly, scents are allowed to be used to attract game animals or game birds if approved by the commission. The commission is proposing to allow urine which meets the criteria of 87-6-221, MCA, and urine that does not originate in a state or province with documented cases of CWD, to be used to attract game animals and game birds. The commission is also proposing to allow artificial scents and RHSA-approved natural glandular scents to be used by hunters to attract game animals except black bears. This would be done through spraying or pouring the scent on the ground or other objects. These restrictions will reduce the probability of inadvertent spread of CWD.

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Wildlife Division, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail [fwpwd@mt.gov](mailto:fwpwd@mt.gov), and must be received no later than May 14, 2021.

5. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Fish, Wildlife and Parks, Legal

Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to [jesssnyder@mt.gov](mailto:jesssnyder@mt.gov).

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted directly in person on March 11, 2021.

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

/s/ Aimee Hawkaluk

Aimee Hawkaluk  
Rule Reviewer

/s/ Lesley Robinson

Lesley Robinson  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State April 6, 2021.

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 12.11.6705 pertaining to the ) PROPOSED AMENDMENT  
implementation of the commercial )  
use cap on the Madison River )

TO: All Concerned Persons

1. On May 13, 2021, at 6:00 p.m., the Fish and Wildlife Commission (commission) will hold a telephonic public hearing via ZOOM meeting platform to consider the proposed amendment of the above-stated rule. 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 way:

(a) Dial by telephone: 1-646-558-8656  
Meeting ID: 851 7047 0874  
Password: 814606

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 commission 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 April 30, 2021, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail [jesssnyder@mt.gov](mailto:jesssnyder@mt.gov).

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

12.11.6705 MADISON RIVER COMMERCIAL USE CAP (1) and (2) remain the same.

(3) ARM 12.11.6705 will be implemented January 1, ~~2022~~ 2023.

(4) remains the same.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

REASON: On December 24, 2020, the Fish and Wildlife Commission adopted administrative rules regarding the recreational use of the Madison River (Madison River Recreation Management rules). ARM 12.11.6705, pertaining to the Madison River Commercial Use Cap, provides an implementation date of January 1, 2022.

The Madison River Recreation Management rules also provide for a Madison River Work Group to develop recommendations to the commission for approval regarding the Madison River Recreation Management rules including allocation of opportunity pursuant to the commercial use cap.

Extending the implementation date of the commercial use cap will provide time for the appointment and meeting of the work group to develop recommendations for the commission to consider

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Madison River Comments, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail [madisonrivercom@mt.gov](mailto:madisonrivercom@mt.gov), and must be received no later than May 14, 2021.

5. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to [jesssnyder@mt.gov](mailto:jesssnyder@mt.gov).

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

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

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

/s/ Lesley Robinson  
Lesley Robinson  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State April 6, 2021.

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

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

TO: All Concerned Persons

1. On May 11, 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 rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the novel coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting, <https://mt-gov.zoom.us/j/96061827447>  
Meeting ID: 960 6182 7447

-OR-

(b) Dial by telephone, +1 646 558 8656 or +1 406 444 9999  
Meeting ID: 960 6182 7447

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

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 3, 2021, to advise us of the nature of the accommodation that you need. Please contact Celeste Ackerman, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011; telephone (406) 444-6604; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail [celeste.ackerman@mt.gov](mailto:celeste.ackerman@mt.gov).

3. General Statement of Reasonable Necessity: There is reasonable necessity to amend ARM 24.29.1433, 24.29.1534, and 24.29.1538 to incorporate the annually updated medical fee schedules and related materials to comply with the provisions of 39-71-704(2), MCA, that require the department annually establish a medical fee schedule. Each year, the department takes into consideration factors including the historical paid reimbursement as a percentage of Medicare, comparison with the region, and the western medical price index.

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



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

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

(viii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2020," for services provided from July 1, 2020, through June 30, 2021; and

(ix) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2021."

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

(viii) Effective July 1, 2020, through June 30, 2021, the base rate is \$8,909.

(ix) Effective July 1, 2021, the base rate is \$9,435.

(b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight. For example, if the MS-DRG weight is 0.5, the amount payable is ~~\$4,454.50~~ \$4,717.50, which is the base rate of ~~\$8,909~~ \$9,435 multiplied by 0.5.

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

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

(viii) ~~\$123, on or after from~~ July 1, 2020, through June 30, 2021; and

(ix) \$130, on or after July 1, 2021.

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

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

(viii) ~~\$92, on or after from~~ July 1, 2020, through June 30, 2021; and

(ix) \$98, on or after July 1, 2021.

(c) through (g) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

24.29.1534 PROFESSIONAL FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) remains the same.

(a) the instruction set for the fee schedule as adopted in this subsection. All the definitions, guidelines, RVUs, procedure codes, modifiers, and other explanations provided in the instruction set affecting the determination of individual fees apply. ~~A copy of the~~ Copies of the current fee schedule and the instruction set may also be obtained ~~at no charge from the Montana Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011~~ on the Employment Relations Division website;

(i) through (1)(a)(vi) remain the same.

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

(viii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2020" applies to services provided ~~on or after from~~ July 1, 2020, through June 30, 2021; and

(ix) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2021" applies to services provided on or after July 1, 2021.

(b) through (10) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

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

(i) \$64.04 from July 1, 2019, through June 30, 2020; and

(j) \$63.41 ~~on or after from~~ July 1, 2020-, through June 30, 2021; and

(k) \$61.05 on or after July 1, 2021.

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

(j) \$69.58 from July 1, 2019, through June 30, 2020; and

(k) \$67.32 ~~on or after from~~ July 1, 2020-, through June 30, 2021; and

(l) \$64.84 on or after July 1, 2021.

(4) and (5) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

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

5. Copies of the proposed 2021 publication are available and can be accessed at <http://erd.dli.mt.gov/work-comp-claims/medical-regulations>.

6. A printed version of the proposed 2021 publication is also available by contacting Celeste Ackerman at the address, e-mail, or telephone numbers listed in paragraph 2 of this notice.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Celeste Ackerman, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; fax (406) 444-4140; or e-mail to [celeste.ackerman@mt.gov](mailto:celeste.ackerman@mt.gov) and must be received no later than 5:00 p.m., on May 17, 2021.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, 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, 1315 E. Lockey Avenue, P.O. Box

1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-4493, or e-mailed to [laura.ducolon@mt.gov](mailto:laura.ducolon@mt.gov).

9. 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.

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

11. 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.

12. 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 April 6, 2021.

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PUBLIC HEARING ON  
24.183.303 definitions, 24.183.411 ) PROPOSED AMENDMENT  
teaching of land surveying subjects, )  
and 24.183.2105 continuing )  
professional competency – continuing )  
education )

TO: All Concerned Persons

1. On May 11, 2021, at 2:00 p.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/83842595250>  
Meeting ID: 838 4259 5250, Passcode: 200121  
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656  
Meeting ID: 838 4259 5250, Passcode: 200121

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 Professional Engineers and Professional Land Surveyors no later than 5:00 p.m., on May 4, 2021, to advise us of the nature of the accommodation that you need. Please contact Samuel Hunthausen, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or [dlibsdpels@mt.gov](mailto:dlibsdpels@mt.gov) (board's e-mail).

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

24.183.303 DEFINITIONS (1) through (10) remain the same.

(11) "Progressive land survey experience" means experience obtained under the supervision of a licensed professional land surveyor, on land surveying projects, which, over time, are of increasing quality and require greater responsibility, and

which must include experience with the Public Land Survey System (PLSS) and Bureau of Land Management Manual of Survey Instructions, and may include one or more of the following:

~~(a) experience on land surveying projects which, over time, are of increasing quality and require greater responsibility of the applicant;~~

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

(12) through (15) remain the same.

AUTH: 37-67-202, MCA

IMP: 37-67-101, 37-67-103, 37-67-314, 37-67-322, 37-67-323, 37-67-324, 37-67-325, 37-67-326, 37-67-328, MCA

REASON: Multiple surveying systems are utilized to divide land in the United States of America. Montana utilizes the Public Land Survey System (PLSS) which is guided by the Bureau of Land Management (BLM) Survey Manual. Approximately 30 other states utilize this same system. Surveys dividing or modifying land are publicly filed, and other surveyors use existing surveys in completing portions of their work. When a piece of land is surveyed improperly it can affect subsequent surveys and/or property owners' understanding of the land they own. Surveyors and landowners have reported repeated and significant issues with surveys that do not comply with the PLSS and are not guided by the BLM Survey Manual, which often result in complaints to the board. The board concluded that requiring applicants for licensure as professional land surveyors in Montana have some experience in the PLSS will help ensure the surveys the public relies on are accurate and comply with the system utilized to divide land in this state.

24.183.411 TEACHING OF LAND SURVEYING SUBJECTS (1) ~~Either~~ When teaching land surveying subjects in Montana, either the class instructor or the person in responsible charge of the board-approved curriculum shall be a Montana licensed professional land surveyor and be in responsible charge of class instruction of land surveying subjects.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-67-101, 37-67-325, 37-67-326, MCA

REASON: Following questions from educational programs, the board amended ARM 24.183.407 in 2019 to clarify that its provisions apply only to teaching of advanced engineering where the board has jurisdiction, i.e. within the state of Montana. Subsequently, the board realized it inadvertently failed to amend this rule to make the same clarification. It is reasonably necessary to amend this rule for consistency and to clarify that instructors who teach land surveying subjects in Montana must be Montana licensed professional land surveyors.

24.183.2105 CONTINUING PROFESSIONAL COMPETENCY – CONTINUING EDUCATION (1) Every licensee shall meet the continuing professional competency (continuing education) requirements of these regulations for professional development ~~as a condition for licensure and affirm an~~

understanding of their recurring duty to comply with continuing education requirements as a part of renewal.

(2) through (5) remain the same.

~~(6) The responsibility of maintaining records to be used to support credits claimed is the responsibility of the licensee.~~ Licensees shall maintain records and documentation of completed continuing education and make the records available upon board request. Records required include, but are not limited to:

(a) through (8) remain the same.

(9) The department may randomly audit up to 50 percent of renewed licensees.

(10) Licensees found to be in noncompliance with continuing education requirements may be subject to administrative suspension.

AUTH: 37-1-319, MCA

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

REASON: In response to a recommendation from the department's legal staff, the board is proposing to amend its continuing education (CE) rule to align with 37-1-306, MCA, and standardized department procedures for license renewal, administrative suspension, and auditing. Utilizing standardized procedures across all boards will further increase organizational efficiency and cost savings.

The board is adding (9) to allow flexibility in department determination of audit percentages to conserve board resources and emphasize a data-driven approach to audit administration. Adding (10) will clarify that licensees not in compliance with CE requirements may be subject to administrative suspension in alignment with the statutory parameters of 37-1-321, MCA.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdpels@mt.gov](mailto:dlibsdpels@mt.gov), and must be received no later than 5:00 p.m., May 14, 2021.

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

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

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

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

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.183.303, 24.183.411, and 24.183.2105 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; facsimile (406) 841-2305; or to [dlibsdpels@mt.gov](mailto:dlibsdpels@mt.gov).

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

BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS  
RONALD DRAKE, PE  
PRESIDING OFFICER

/s/ DARCEE L. MOE

Darcee L. Moe  
Rule Reviewer

/s/ LAURIE ESAU

Laurie Esau, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 6, 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 37.71.601 and 37.71.602            ) PROPOSED AMENDMENT  
pertaining to low income                )  
weatherization assistance program       )

TO: All Concerned Persons

1. On May 6, 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/95093386597>. Meeting ID: 950 9338 6597; or

(b) Dial by telephone +1 646 558 8656. Meeting ID: 950 9338 6597. Find your local number: <https://mt-gov.zoom.us/j/95093386597>.

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 April 30, 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](mailto:dphhslegal@mt.gov).

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

37.71.601 ELIGIBILITY FOR WEATHERIZATION SERVICE: PRIORITIES

(1) Except as provided in (1)(a), a dwelling is not eligible for weatherization services funded with U.S. Department of Energy (DOE) funds if the dwelling has been weatherized with DOE funds after September 30, 1994 within the fifteen years following the date of the previous weatherization completion.

(a) remains the same.

(2) Except as provided in (2)(a), a dwelling is not eligible for weatherization services funded with NorthWestern Energy free weatherization (NWE) funds if the dwelling has been weatherized within the ten years immediately preceding following the date of the ~~current application for~~ previous weatherization completion.

(a) and (b) remain the same.



(3) Except as provided in (3)(a), a dwelling is not eligible for weatherization services funded with LIEAP weatherization funds if the dwelling has been weatherized within the ten years ~~immediately preceding~~ following the date of the ~~current application for~~ previous weatherization completion.

(a) thru (9) remain the same.

(10) When a dwelling is prioritized high enough to be scheduled for weatherization work, the delivery of services will be deferred until a later date if providing the services would pose a threat to the health or safety of either the weatherization installers or any other person. In such cases the delivery of services will be postponed until the conditions that pose a threat to health or safety have been resolved. The department adopts and incorporates by reference the department's Weatherization Assistance Program (WAP) Policy Manual effective ~~July 1, 2019~~ July 1, 2021, which outlines the circumstances that justify a deferral of weatherization services. The WAP Policy Manual is located at the department's web site at <http://dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620.

AUTH: 53-2-201, 90-4-201, MCA

IMP: 53-2-201, 90-4-201, 90-4-202, MCA

#### 37.71.602 DETERMINING LOW INCOME WEATHERIZATION ASSISTANCE (1) remains the same.

(2) Dwellings chosen to be weatherized must receive those measures determined to be cost effective as defined in 10 CFR 440, as amended through ~~July 1, 2019~~ July 1, 2021. The department adopts and incorporates by reference 10 CFR 440, as amended through ~~July 1, 2019~~ July 1, 2021. A copy of these federal regulations may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925.

(3) The department adopts and incorporates by reference the department's Weatherization Assistance Program (WAP) Policy Manual and National Renewable Energy Laboratory (NREL) Standard Work Specifications effective ~~July 1, 2019~~ July 1, 2021. The WAP Policy Manual is located at the department's web site at <http://dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620. The NREL Standard Work Specifications are located at the NREL web site at <https://sws.nrel.gov/>.

AUTH: 53-2-201, 90-4-201, MCA

IMP: 53-2-201, 90-4-201, 90-4-202, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing the amendment of ARM 37.71.601 and 37.71.602 pertaining to the Low Income Weatherization Assistance Program (LIWAP). LIWAP is a program to help low income households save home heating costs and address health and safety issues. The department proposes to make the following changes to its administrative rules governing LIWAP.

ARM 37.71.601(1)

The department proposes to amend ARM 37.71.601(1) to come in line with Section 1011 (h) of the Energy Act of 2020 which removes the reweatherization date of September 30, 1994 and creates a "rolling" option. The Energy Act of 2020 changed the authority to "reweatherize" if the dwelling has been weatherized with Department of Energy (DOE) funds fifteen years following the date of the previous weatherization completion. Previously, homes could not be "reweatherized" if the home had been weatherized with DOE funds after September 30, 1994. This change will allow homes to be weatherized sooner.

ARM 37.71.601(2)

The department proposes to amend ARM 37.71.601(2) related to the reweatherization date for NorthWestern Energy (NWE) homes. Currently, NWE homes can be reweatherized ten years following the date of the previous weatherization application. The department proposes to change the reweatherization date for NWE homes to ten years following the date of the previous weatherization completion. This change is necessary to be more consistent with the DOE reweatherization date.

ARM 37.71.601(3)

The department proposes to amend ARM 37.71.601(3) related to the reweatherization date for the Low Income Energy Assistance Program (LIEAP). Currently, LIEAP homes can be reweatherized ten years following the date of the previous weatherization application. The department proposes to change the reweatherization date to ten years following the date of the previous weatherization completion. This change is necessary to be more consistent with the DOE reweatherization date.

ARM 37.71.601(10)

The department is proposing to amend ARM 37.71.601(10) to update the date of the policy manual to July 1, 2021, to ensure the updated Weatherization Assistance Program Policy and Procedure Manual will be used for the 2021 program year. This is necessary to ensure that readers are reviewing the appropriate policy.

ARM 37.71.602

The department is proposing to amend ARM 37.71.602(2) to require the use of the current edition of 10 CFR, Part 440, amended through July 1, 2021. This is necessary to ensure the most current edition of 10 CFR, Part 440 is utilized.

The department is also proposing to amend ARM 37.71.602(3) to ensure the updated Weatherization Assistance Program Policy and Procedure Manual will be used for the 2021 program year. This is necessary to ensure weatherization measures are installed as the department intends.

In addition, the department is proposing to further amend ARM 37.71.602(3) to incorporate by reference the updated Standard Work Specifications (SWS) on the National Renewable Energy Laboratory (NREL) website, as amended through July 1, 2021. The amendment also provides the link to the NREL website where the Standard Work Specifications are stored. This is necessary to ensure the most current weatherization standards are utilized.

#### Fiscal Impact

The Low Income Energy Assistance Program, the U.S. Department of Energy, and Bonneville Power Administration are 100% federally funded. Montana Dakota Utilities and NorthWestern Energy are 100% utility funds. The department estimates that Montana will receive the same amount in utility funds compared to last heating season. It is estimated that 18,500 households will qualify for weatherization benefits this year which is comparable to last year.

The department intends these amendments to be effective July 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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., May 14, 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.

/s/ Ann Hefenieder  
Ann Hefenieder  
Rule Reviewer

/s/ Adam Meier  
Adam Meier, Director  
Public Health and Human Services

Certified to the Secretary of State April 6, 2021.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
MONTANA STATE AUDITOR

In the matter of the adoption of New     ) NOTICE OF ADOPTION  
Rules I through VIII pertaining to     )  
Surety Insurance Producers Who     )  
Sell, Solicit, or Negotiate Commercial     )  
Bail Bonds     )

TO: All Concerned Persons

1. On April 30, 2020, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-261 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 739 of the 2020 Montana Administrative Register, Issue Number 8. On October 23, 2020, CSI published an amended notice of public hearing on the proposed adoption of the above-stated rules at page 1860 of the 2020 Montana Administrative Register, Issue Number 20.

2. CSI has adopted the following rules as proposed: New Rule VI (ARM 6.6.6005) and New Rule VII (ARM 6.6.6006).

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

NEW RULE I (ARM 6.6.6001) DEFINITIONS For the purposes of this subchapter, the following terms have the following meanings:

(1) ~~"90-day surety arrest period" means the 90-day period, during which a surety bail insurance producer is allowed to arrest and surrender a principal, pursuant to 46-9-503 and 46-9-510, MCA, commencing upon the issuance by a court of an "Order of Forfeiture" and ending 90 days thereafter.~~

(2) through (7) remain as proposed but are renumbered (1) through (6).

AUTH: 33-1-313, 33-26-108, MCA

IMP: 33-26-108, MCA

NEW RULE III (ARM 6.6.6002) BOND INSTRUMENTS (1) remains as proposed.

(2) Bail ~~bonds~~ bond applications shall be signed by the principal and the surety bail insurance producer, and an executed copy shall be given to the principal.

(3) remains as proposed.

AUTH: 33-1-313, 33-26-108, MCA

IMP: 33-17-201, 33-26-108, MCA

NEW RULE IV (ARM 6.6.6003) COLLATERAL, TRUST ACCOUNTS, RECORDS OF ARREST AND SURRENDER, LIST OF FORFEITURES, COSTS, NOTICE OF INCARCERATION (1) and (2) remain as proposed.

(3) Collateral security must be held and maintained in trust. When collateral security is received in the form of cash, check, or other negotiable instrument, and unless cash collateral is deposited with and held in trust by the commercial bail bond surety insurer, the surety bail insurance producer shall deposit the cash or instrument, within five banking days after receipt, in a trust account in a bank insured by the Federal Deposit Insurance Corporation. The trust account may not contain operating or personal funds.

(4) and (5) remain as proposed.

(6) If the court exonerates a bail bond ~~or pays the premium for the bail bond~~, the surety bail insurance producer shall return all collateral or other security to the person entitled to it within five business days after receipt of written notification of exoneration. All collateral or security must be returned in the condition it was received, and at the location it was received, at the principal's address, or the parties may mutually agree to another location.

(7) remains as proposed.

(8) A surety bail insurance producer may bill the principal for actual and reasonable costs, listed in this rule, which the surety bail insurance producer incurs in securing the appearance or arrest of a principal ~~during the 90-day period defined in [NEW RULE I](1)~~. A surety bail insurance producer shall keep receipts for actual costs for a period of three years. The costs which a surety bail insurance producer may recover from the principal, in addition to the premium or bail amount, are limited to the actual and reasonable direct expenses, including but not limited to gasoline, and food and lodging, incurred in searching for, arresting, and transporting (to a detention facility) the principal ~~during the 90-day surety arrest period~~.

(9) and (10) remain as proposed.

AUTH: 33-1-313, 33-26-108, MCA

IMP: 33-17-1001, 33-17-1102, 33-26-108, MCA

NEW RULE V (ARM 6.6.6004) PROHIBITED PRACTICES (1) A surety bail insurance producer may not:

(a) through (e) remain as proposed.

~~(f) arrest, attempt to arrest, enter a principal's residence, detain, conduct surveillance, or surrender a principal to law enforcement authorities, until after the principal has failed to appear before a court as required, and an order of forfeiture has been issued by a court, and only during the 90-day period thereafter, as defined in [NEW RULE I](1);~~

~~(g) arrest, attempt to arrest, detain, or surrender a principal to law enforcement authorities, for any of the following reasons:~~

~~(i) the principal's failure to comply with any condition of release imposed by the court, other than for non-appearance and during the 90-day surety arrest period;~~

~~(ii) failure of the principal to make payments on a deferred premium payment agreement or promissory note;~~

- ~~(iii) the principal's breach of any condition of the agreement with the surety bail insurance producer;~~
- ~~(iv) the principal's release of an indemnitor of the payment agreement with the surety bail insurance producer;~~
- ~~(v) alleged or actual fraud in the principal's application for the bond;~~
- ~~(vi) a belief or concern that the principal may not appear in court as required, regardless of the basis for the belief or concern;~~
- ~~(vii) violation of the principal's conditions of release set by the court.~~
- ~~(viii) for any other reason, other than after the principal's failure to appear at the time and date ordered by the court, and after the court enters an order of forfeiture.~~
- (h) remains as proposed but is renumbered (f).
- ~~(i) fail to purchase and maintain the surety bond required by [NEW RULE II];~~
- (j) and (k) remain as proposed but are renumbered (g) and (h).

AUTH: 33-1-313, 33-26-108, MCA

IMP: 33-17-1001, 33-17-1103, 33-18-210, 33-18-212, 33-26-108, 46-9-401, 46-9-402, 46-9-502, 46-9-503, 46-9-505, 46-9-510, 46-9-511, 46-9-512, MCA

4. CSI has not adopted proposed NEW RULES II and VIII.

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

COMMENT #1: Multiple commenters stated that they did not believe the proposed rules, or individual proposed rules, were necessary, or they questioned the need for the proposed rules, or they raised concerns about what they stated was overregulation of the bail bonds industry, but did not provide additional, substantive comment about particular proposed rules.

RESPONSE #1: CSI appreciates the public comment. CSI believes the adoption and implementation of the proposed rules are reasonably necessary. The issues raised by these public comments were not specific enough for CSI to provide a specific response. As stated in the authorizing and implementing statutes from the Notice of Public Hearing on Proposed Adoption, MAR Notice No. 6-261 (April 30, 2020), CSI has statutory authority to adopt the proposed rules.

COMMENT #2: Multiple commenters stated that they believed the proposed rules are in conflict with statutes or case law but did not provide a legal citation for their belief.

RESPONSE #2: CSI appreciates the public comment. The issues raised by these public comments were not specific enough for CSI to provide a specific response. As stated in the authorizing and implementing statutes from the Notice of Public Hearing on Proposed Adoption, MAR Notice No. 6-261 (April 30, 2020), CSI has statutory authority to adopt the proposed rules. CSI notes that it does address comments that provided a specific legal citation for consideration.

COMMENT #3: One commenter stated their belief that the proposed changes should be made through the legislative process rather than the rulemaking process.

RESPONSE #3: CSI appreciates the public comment. As stated in the authorizing and implementing statutes from the Notice of Public Hearing on Proposed Adoption, MAR Notice No. 6-261 (April 30, 2020), the Montana Legislature has delegated to CSI statutory authority to adopt the proposed rules. Administrative rules provide important support for statutes. For example, although current Montana statutes address the surety process, the Legislature also authorized CSI to adopt rules that detail and clarify that process. The proposed rules address questions and issues CSI has received from the public, including courts, detention facilities, and surety bail clients.

COMMENT #4: One commenter stated that CSI should explain its authority to override a sitting judge's order on conditions of bond.

RESPONSE #4: CSI appreciates the public comment. The proposed rules do not address a judicial order on the conditions of a bond. As stated in the authorizing and implementing statutes from the Notice of Public Hearing on Proposed Adoption, MAR Notice No. 6-261 (April 30, 2020), the Montana Legislature has delegated to CSI statutory authority to adopt the proposed rules.

COMMENT #5: Multiple commenters stated that CSI should meet with bail bonds industry members and discuss the industry, its concerns, and its ideas for addressing CSI's concerns before drafting proposed rules for the industry. Multiple commenters stated that CSI should hold an informal conference pursuant to 2-4-304, MCA, before continuing the rulemaking process.

RESPONSE #5: CSI appreciates the public comment. The current administrative rulemaking proposal is the culmination of a process that began many years ago. Before, during, and after initially proposing rulemaking in 2015, CSI solicited input from stakeholders, communicated proposed rule options to licensees and insurance carriers, and listened to the input it received. CSI received valuable input from, among others, members of the surety industry, courthouse personnel, and members of the public, including complaints about the industry or producers. CSI revised some of provisions between the 2015 and the 2020 rulemaking proposals. CSI also received input from bail bond industry members and members of the public for the current rulemaking proposal, including at the hearing and through the comment period and extended comment period. CSI is confident the topic has been thoroughly reviewed and that the variety of input has been considered, without the need for an informal conference pursuant to 2-4-304, MCA.

COMMENT #6: One commenter stated that they have suggested since 2015 that CSI should discuss the drafting of proposed rules with the bail bonds industry members, the courts, and the jails and that 90-95% of industry members' businesses will be ruled out by the proposed rules.



RESPONSE #6: CSI appreciates the public comment. Please see the response to the previous public comment. CSI is unable to address the assertion that members of the bail bonds industry would be "ruled out" because no specific information has been provided demonstrating that a license or licensee would be ruled out.

COMMENT #7: One commenter stated that most of the same rules were proposed in 2015 and were not adopted, and the commenter questioned what changed and where the public information is regarding what changed.

RESPONSE #7: CSI appreciates the public comment. The 2015 rulemaking proposals were not finalized and adopted within the timeframe required to do so. That decision was not because there was a lack of need for the rules, but rather because CSI has considered revisions to the rulemaking proposal since 2015 and CSI has continued to receive comments about the bail bond industry. CSI has not prepared a comparison of the language used in the 2015 rulemaking proposal and the language used in the 2020 rulemaking proposal. However, the exact language in each rulemaking proposal is publicly available at [www.mtrules.org](http://www.mtrules.org) by searching for MAR Notice No. 6-207 for the 2015 proposal and MAR Notice No. 6-261 for the 2020 proposal.

COMMENT #8: Multiple commenters stated that CSI should postpone adoption of the proposed rules until an in-person hearing can be held on the proposed rules.

RESPONSE #8: CSI appreciates the public comment. CSI held a public hearing on May 28, 2020, via the electronic Zoom platform during which members of the public participated and provided public comment on the rulemaking proposal. CSI is unaware of any requirement that the hearing be held in-person, and in light of the Covid-19 pandemic and the Governor's state of emergency declaration and related orders, it was reasonable to hold an electronic meeting rather than an in-person meeting.

COMMENT #9: One commenter stated that the rulemaking hearing held via Zoom did not meet the requirement in 2-3-111(2), MCA, for being held in an accessible facility.

RESPONSE #9: CSI appreciates the public comment. The requirement in 2-3-111(2), MCA, for use of an accessible facility applies when the public hearing "directly impacts a specific community or area." The proposed rules have statewide application, rather than being geographically directed, and as a result that requirement in 2-3-111(2), MCA, did not apply to the rulemaking hearing.

COMMENT #10: Multiple commenters stated that the rulemaking hearing held via Zoom did not allow members of the public to fully participate in the hearing, such as limiting the ability to raise their hands, to comment if not specifically invited to the meeting, or to offer comments or questions when invited to at the beginning and end

of the meeting. One commenter stated that the public chat and hand raise features available within the Zoom platform were disabled.

RESPONSE #10: CSI appreciates the public comment. The interactive features at the Zoom meeting were equally available to all members of the public attending the meeting. Public comment at the hearing was provided by a number of different members of the public through the Zoom platform's interactive features. CSI does not know whether an individual's computer settings may have affected that individual's ability to use, or understanding of how to use, the Zoom features. CSI notes that written public comment also was received from members of the public independently of whether those individuals attended the public hearing.

COMMENT #11: Multiple commenters requested that a workshop or other training opportunity be provided by CSI so that bail bond industry members can become familiar with the rules and how to implement them.

RESPONSE #11: CSI appreciates the public comment. CSI will look at ways to communicate these changes. Each renewal cycle, Montana licensees are required to take a Montana legislative changes course. That course addresses changes to both statutes and administrative rules. CSI develops a course after each legislative session, which is available to continuing education providers. The training requested by the commenter may be one option to fill this training need.

COMMENT #12: One commenter stated that the proposed rules were reactionary based on complaints CSI has received.

RESPONSE #12: CSI appreciates the public comment. Public input over time, including complaints that CSI has received, helped identify issues with or concerns about the bail bond industry that the proposed rules are designed to address.

COMMENT #13: Multiple commenters stated that they have seen no evidence of requests to regulate the bail bonds industry.

RESPONSE #13: CSI appreciates the public comment. As a regulator and consumer protection agency, CSI hears from both consumers and the bail bonds industry. As stated in the REASON section of the rulemaking proposal notice, "In 2003, the legislature granted the commissioner rulemaking authority for surety insurance producers who sell, solicit, or negotiate commercial bail bonds pursuant to 33-26-108, MCA." The commissioner has received consumer complaints, and is aware of incidents, indicating the need for regulation of surety bail insurance producers. Additionally, the commissioner has received requests for regulation from members of the industry seeking specific rules in order to give guidance to the industry, to proscribe against certain conduct, to prevent abuse against consumers, and to level the field in order to prevent unfair methods of competition. CSI has received requests from both the courts and detention facilities for clarification regarding surety bail activity. CSI also has received calls from surety bail producers about the activity or behavior of other surety bail producers. The recurrence of the

complaints and requests, as well as the Legislature's delegation of rulemaking authority, establish a basis for the rulemaking.

COMMENT #14: One commenter stated that CSI did not provide examples of the need for the proposed rules, even when a public records request was submitted.

RESPONSE #14: CSI appreciates the public comment. The public records request received prior to the hearing could not reasonably have been provided prior to that hearing, but the public records were provided after the public comment period closed. CSI amended the rulemaking proposal notice to provide additional time for public comment after the original public comment period had ended. During that extended period, CSI received additional public comment, including from the commenter.

COMMENT #15: One commenter stated that CSI records show that it received 22 complaints over 4 years and that the complaints are miniscule compared to the thousands of bail bonds executed all over Montana every year. Another commenter stated that the 22 complaints regarded only 12 separate bail bond companies even though 53 bail bond companies are listed as active on the Secretary of State's website. Both commenters stated that the proposed rules are directed at the entire industry rather than the companies of concern.

RESPONSE #15: CSI appreciates the public comment. In addition to formal complaints consumers have submitted to CSI, CSI also is aware of incidents that indicate the need for regulation of surety bail insurance producers and has received requests for regulation from members of the industry. As stated in the REASON section of the rulemaking notice proposal, the proposed rules are industry-wide to give guidance to the industry, to proscribe against certain conduct, to prevent abuse against consumers, and to level the field in order to prevent unfair methods of competition.

COMMENT #16: One commenter stated that limiting arrest power is good and that they support the proposed rules.

RESPONSE #16: CSI appreciates the public comment and the support for the proposed rules. The proposed rules protect both consumers and members of the bail bond industry.

COMMENT #17: Multiple commenters stated that the definition of "90-day surety arrest period" in proposed NEW RULE I is contrary to 46-9-510, MCA, because they believe the proposal would limit the ability to arrest and surrender the defendant prior to an order of forfeiture. Multiple commenters stated regarding the "90-day surety arrest period" defined in proposed NEW RULE I and regarding the 90-day period referenced in other proposed rules that if the principal is fleeing the jurisdiction in which the court ordered them not to leave, the producer must have the right to arrest the principal. One commenter stated that the definition of "90-day surety arrest period" in proposed NEW RULE I is contrary to both 46-9-401(3) and

46-9-510, MCA. One commenter stated that the definition of "90-day surety arrest period" in proposed NEW RULE I should be removed because there are legitimate reasons for re-arrest and surrender of the principal when the risk to the producer has changed; the commenter further stated that the proposed definition would invalidate most indemnification agreements because it would excuse fraud, willful breach of release conditions, and loss of an indemnitor. One commenter stated that the definition of "90-day surety arrest period" in proposed NEW RULE I does not take into account that an order of forfeiture must be issued within 10 days of failure to appear. One commenter stated that the definition of "90-day surety arrest period" in proposed NEW RULE I is an attempt to override the courts' authority over the producer's duty to the court.

RESPONSE #17: CSI appreciates the public comment. In adopting the proposed rules, CSI has removed the definition of "90-day surety arrest period" from proposed NEW RULE I and removed related provisions from proposed NEW RULES IV and V.

COMMENT #18: One commenter stated that the definition of "Premium" in proposed NEW RULE I should be simplified to cash, check, or credit card.

RESPONSE #18: CSI appreciates the public comment. "Premium" is defined in 33-15-102(2), MCA, as, "the consideration for insurance, by whatever name called. Any assessment or membership, policy, survey, inspection, service, or similar fee or charge in consideration for an insurance contract is deemed part of the premium." The commenter's proposed change would be contrary to this statutory definition of "premium."

COMMENT #19: One commenter stated that the definition of "Principal" in proposed NEW RULE I should be removed and that a definition of "Defendant" should instead be included, but that defining a defendant as a principal was problematic. Another commenter stated that the definition of "Principal" should be changed to "Indemnitor," "Depositor," or, in relation to premium and collateral, "Principal/Indemnitor" to distinguish between the parties in the transaction. The commenter further stated that a producer's remedy should apply to the indemnitor, not the principal, when seeking reimbursement of costs incurred by the defendant's failure to appear.

RESPONSE #19: CSI appreciates the public comment. While the proposed rules are specific to surety bail bonds, not all bonds include a defendant. Surety bail terms involve the principal, the obligee, and the surety. Surety bonds are a promise by a surety company to pay a first party if a second party fails to meet its obligations. The three parties involved are: the principal (the person who must make good on an obligation), the obligee (the person who needs a guarantee that the principal will perform), and the surety (the issuer of the surety bond guaranteeing that the principal will meet its obligation). These terms are commonly used for bond transactions, and CSI believes the better approach is to use commonly used terms.

COMMENT #20: One commenter stated that the definition of "Surety bail insurance producer" in proposed NEW RULE I should address who can or cannot be licensed, such as felons on active probation because interaction with other felons is a violation of probation.

RESPONSE #20: CSI appreciates the public comment. Licensing of producers generally is addressed in Title 33, chapter 17, MCA, and licensing of felons is specifically addressed in 33-17-1001(1)(e), MCA. The proposed rules do not change those statutory licensing provisions.

COMMENT #21: One commenter stated regarding proposed NEW RULE II that there is no reason producers should be bonded. Multiple commenters stated regarding proposed NEW RULE II that a \$25,000 bond is unreasonably high. One commenter stated that the bond should be \$10,000. One commenter stated that a producer who violates state law or regulations should be responsible for any fine or for restitution, and that the surety should not be responsible. One commenter stated that the broad liability against the bond for violation of any statute or rule is prohibitive and should be limited to either consumer fraud for defined, prohibited practices. Multiple commenters stated that no other insurance producers have to maintain a bond. Multiple commenters stated that a bond is unnecessary because there are civil remedies available if a producer makes a mistake. One commenter stated that a bond was unnecessary because producers are already covered by their surety insurers for liabilities and losses.

RESPONSE #21: CSI appreciates the public comment. In adopting the proposed rules, CSI is not adopting proposed NEW RULE II regarding a surety bond for the producer and proposed NEW RULE VIII regarding the form for a surety bond for the producer. CSI will monitor the need for future rulemaking regarding a surety bond for the producer.

COMMENT #22: One commenter stated that there are insufficient educational opportunities from CSI to assist potential producers in their preparations for the licensing exam.

RESPONSE #22: CSI appreciates the public comment. Montana insurance exams are currently administered by Pearson Vue. The Montana Pearson Vue website provides a detailed exam outline for each exam offered. This outline provides topic details and lists what Montana statutes are covered on the exam. Please see the Montana Pearson Vue website for more details. Surety companies are also required to ensure any appointed surety bail producers are properly trained and educated on their company products.

COMMENT #23: One commenter stated that proposed NEW RULE III was unnecessary because the bond is a monetary obligation between the court and the surety.

RESPONSE #23: CSI appreciates the public comment. As stated in the REASON section of the rulemaking proposal notice, "NEW RULE III is proposed to be adopted in order to prohibit the signing of blank bail bonds and the utilization of unlicensed surety bail insurance producers. The proposed rule is reasonably necessary to prevent the illegal utilization of unlicensed surety bail insurance producers."

COMMENT #24: One commenter stated that proposed NEW RULE III is unnecessary because there already are criminal penalties when an unlicensed individual produces bonds.

RESPONSE #24: CSI appreciates the public comment. While CSI agrees that there are criminal penalties for transacting insurance business without a license, it can be difficult in surety bail transactions to determine who is the licensed producer. The proposed rule specifically addressed occurrences of this behavior in the Montana surety bail industry. For example, the proposed rule clarified and expanded existing licensing requirements by prohibiting a producer from allowing others to transact business using the producer's license or signature. The proposed rule would protect both consumers and surety bail producers who follow the law.

COMMENT #25: Multiple commenters stated that the requirement in proposed NEW RULE III(2) that the principal sign the bond is not possible in most jails and is impossible when a bond is posted at one jail to be transmitted to another jail for an inmate in another jurisdiction.

RESPONSE #25: CSI appreciates the public comment. CSI agrees with the commenter that proposed NEW RULE III(2) is unclear and believes it should be revised to clarify that the principal signs the bail bond application, not the bail bond. The rule as adopted reflects the revision.

COMMENT #26: One commenter, who works at a detention facility, stated that their workplace is very busy and if proposed NEW RULE III(2) resulted in detention facility employees collecting signatures it would both increase their workload and result in those employees acting as surety agents. Another commenter stated that the proposed rule would result in detention facility employees acting as surety agents.

RESPONSE #26: CSI appreciates the public comment. Under the proposed rule, detention facility employees who collect signatures would be acting as couriers, not surety agents.

COMMENT #27: Multiple commenters stated that the signature requirement in proposed NEW RULE III(2) would limit or eliminate access to bonding services, or increase bonding costs for travel expenses, in rural areas.

RESPONSE #27: CSI appreciates the public comment. The proposed rules are designed to provide recordkeeping requirements that are similar to the requirements for other insurance producers. The signature requirement would provide consistency across Montana and across insurance producers, as would the requirement that the

principal receive copies of all related paperwork. On a regular basis CSI receives complaints that the principal has not received copies of, for example, the bond application, the collateral description, or the payment arrangement. The commenter does not provide information demonstrating that the proposed rule would limit or eliminate access to bonding services, or increase bonding costs for travel expenses, in rural areas.

COMMENT #28: One commenter stated that requiring a signature by the principal was inconvenient, was time consuming, and would result in small bonds not being worth the additional steps, which would lead to an increase in the already overcrowded prison population.

RESPONSE #28: CSI appreciates the public comment. Although the proposed rules would provide consistency and predictability for both consumers and the bail bond industry, producers would determine whether any particular bail bond was "worth the additional steps" on a case-by-case basis.

COMMENT #29: One commenter stated that the requirement in proposed NEW RULE III(2) that the principal be given a copy of the bond would result in increased fraud by principals who copy bonds and powers of attorney to bail out other inmates. The commenter recommended that because the contract is between the signer and the producer, only the detention facility or court should have a copy, not the principal.

RESPONSE #29: CSI appreciates the public comment. Industry documentation and blank forms are already available to the public. As these documents are already publicly available, providing copies of those documents to the principal does not perpetrate fraud. CSI continues to believe the principal should have a copy of the contract.

COMMENT #30: One commenter stated that proposed NEW RULE III(3) is unclear because it does not indicate whether the three-year period starts when the bond is issued or when the bond is exonerated.

RESPONSE #30: CSI appreciates the public comment. The proposed rule is consistent with 33-17-1101(3), MCA, which requires producers to keep records "for a period of at least 3 years after completion of the respective transactions."

COMMENT #31: One commenter stated that there are five different things included in proposed NEW RULE IV that should be broken down and detailed for the industry.

RESPONSE #31: CSI appreciates the public comment. The commenter does not explain how they believe proposed NEW RULE IV could be structured or detailed differently and, thus, CSI is unable to respond to this comment.

COMMENT #32: One commenter stated that proposed NEW RULE IV is unnecessary because the insurers require the same information as in paragraphs (5) and (7) and can audit and inspect the producers without notice.

RESPONSE #32: CSI appreciates the public comment. CSI agrees that the proposed rule is consistent with current practices and not burdensome for producers to implement. The proposed rule would standardize these practices independent of individual contractual requirements.

COMMENT #33: One commenter stated that the requirement in proposed NEW RULE IV(1) limiting collateral to 250% of the bond amount improperly limits how consumers use their property because it limits the types of property that can be used as collateral based on value.

RESPONSE #33: CSI appreciates the public comment. The proposed rule does not address the type of property that can be used as collateral but, rather, the ratio of the collateral to the bond amount, which must not exceed 250%. The proposed rule also contains flexibility that allows the ratio to exceed 250% when "no other collateral is available."

COMMENT #34: One commenter stated regarding proposed NEW RULE IV(3) that the requirement for cash collateral to be kept in a trust account is commonsense and a necessary regulation.

RESPONSE #34: CSI appreciates the public comment and the support for the proposed rule.

COMMENT #35: One commenter stated regarding proposed NEW RULE IV(3) that many insurers contractually require cash collateral over a certain amount to be deposited with the surety, which would conflict with the proposed rule and arguably is the better practice.

RESPONSE #35: CSI appreciates the public comment. CSI agrees with the commenter that proposed NEW RULE IV(3) should be revised to allow cash collateral to be either deposited in a trust account or deposited with and held in trust by the surety insurer. The rule as adopted reflects the revision.

COMMENT #36: One commenter stated regarding proposed NEW RULE IV(3) that it would be impractical to open hundreds, if not thousands, of collateral accounts for every dollar received.

RESPONSE #36: CSI appreciates the public comment. CSI anticipates that only one trust account would be required for each producer, not separate accounts for each client. Producers must maintain documentation for each transaction.

COMMENT #37: One commenter stated that if the Montana Uniform Commercial Code (UCC) required a signed security agreement, application of that requirement to



producers was excessive. The commenter also expressed uncertainty about the requirements of the UCC and how they would apply to different types of collateral.

RESPONSE #37: CSI appreciates the public comment. CSI believes that requiring a signed security agreement is reasonable, not excessive, and does not conflict with the UCC.

COMMENT #38: One commenter stated regarding proposed NEW RULE IV(5) that reasonable notice at a reasonable time for inspection would be less harsh and more consistent with the practice of regulating agencies in other jurisdictions.

RESPONSE #38: CSI appreciates the public comment. CSI believes that inspection of records without notice is reasonable in light of the requirement that records be maintained on an ongoing basis and, therefore, should be available for inspection at all times.

COMMENT #39: One commenter stated that "terms of all commercial bail bond transactions" is not defined in proposed NEW RULE IV(5) and questioned whether maintaining copies of all bail bond agreements and other records would be sufficient.

RESPONSE #39: CSI appreciates the public comment. Although not specifically defined in the rulemaking proposal, "terms of all commercial bail bond transactions" would include all information about the surety transaction. The information would not be limited to copies of bail bond agreements but, rather, would also include bond applications, collateral agreements, collateral inventory, payment records, and any other information related to the surety transaction.

COMMENT #40: Multiple commenters stated that the requirement in proposed NEW RULE IV(6) requiring return of collateral or other security within five days is unreasonable because of the time needed to obtain a certified copy of the bond exoneration, mailing the copy to the surety, and the surety recording the documents to release the lien. One commenter stated that the industry standard is 21 days. Another commenter stated that receipt of the exoneration should be notarized and certified by the clerk of court to comply with a five-day timeline.

RESPONSE #40: CSI appreciates the public comment. The period for return of collateral in the proposed rule provides a reasonable balance between the time the bond is exonerated and the time the collateral is returned. The commenter does not provide information demonstrating that 5 business days provides an unreasonable balance or that 21 days is a recognized standard in the bail bond industry. CSI will monitor the need for future rulemaking regarding return of collateral.

COMMENT #41: One commenter stated they are uncertain what "If the court ... pays the premium for the bail bond" means in proposed NEW RULE IV(6) because they are not aware of a situation where the court may pay the premium.

RESPONSE #41: CSI appreciates the public comment. CSI agrees that proposed NEW RULE IV(6) should be revised to eliminate the phrase "or pays the premium for the bail bond" because that phrase is unnecessary. The rule as adopted reflects the revision.

COMMENT #42: One commenter questioned how proposed NEW RULE IV(6) would apply if the collateral were used to secure payment of the premium rather than secure the bond itself.

RESPONSE #42: CSI appreciates the public comment. If the producer and principal (or indemnitor) enter into a payment arrangement that is separate from and independent of the bail bond, that arrangement would require separate terms and documentation. For example, if the producer offered a personal loan to the principal for the premium, that transaction would be separate from the bail bond. Collateral that secures an independent arrangement for a premium payment arrangement may not be the same collateral that is also used to secure the bond itself.

COMMENT #43: One commenter stated that "receipt of written notice of exoneration" in proposed NEW RULE IV(6) is unclear about whether the receipt is from the court or from someone else.

RESPONSE #43: CSI appreciates the public comment. "Receipt of written notice of exoneration" must be from the court issuing the exoneration.

COMMENT #44: One commenter stated that inclusion of "at the principal's address" in proposed NEW RULE IV(6) was unnecessary and that "at the location it was received ... or the parties may mutually agree to another location" was sufficient.

RESPONSE #44: CSI appreciates the public comment. The proposed rule provides flexibility for the parties to mutually agree upon another location for return of collateral or other security, but inclusion of the principal's address in the rule establishes a default location in the event that the parties cannot mutually agree.

COMMENT #45: One commenter stated regarding proposed NEW RULE IV(7) that the requirement for maintaining lists of forfeitures and arrests is unnecessary and ridiculous because that information is already contained in public records and most producers already maintain electronic records of that information.

RESPONSE #45: CSI appreciates the public comment. The requirement would standardize the collection of information and allow CSI access to information necessary for reconciliation and verification of accounts when CSI examines a producer's records.

COMMENT #46: One commenter stated they were uncertain regarding whether the lists required by proposed NEW RULE IV(7) can be one list or separate lists.

RESPONSE #46: CSI appreciates the public comment. Although the proposed rule requires a list of forfeitures and a list of arrests and surrenders, the purpose of the rule would be met if a single list were maintained that is or can readily be sorted into the two required lists.

COMMENT #47: One commenter stated that they were uncertain whether the time period in proposed NEW RULE IV(7) is from bond execution or forfeiture.

RESPONSE #47: CSI appreciates the public comment. The proposed rule is consistent with 33-17-1101(3), MCA, which requires producers to keep records "for a period of at least 3 years after completion of the respective transactions."

COMMENT #48: One commenter stated regarding proposed NEW RULE IV(8) that it is unclear whether the costs are those the producer incurs directly or whether they can include fugitive recovery services.

RESPONSE #48: CSI appreciates the public comment. CSI believes the proposed rule is clear but can be amended in the future if additional clarification is needed regarding allowable costs.

COMMENT #49: One commenter stated their support for the implementation of proposed NEW RULE IV(8) and (9).

RESPONSE #49: CSI appreciates the public comment and the support for the proposed rule.

COMMENT #50: One commenter stated regarding proposed NEW RULE IV(9) that it does not make sense to require the producer to pay the forfeiture before they can liquidate collateral because the purpose of the collateral is to pay the forfeiture.

RESPONSE #50: CSI appreciates the public comment. The purpose of collateral is to secure the bond. Until the 90-day forfeiture period has elapsed, the collateral may not be liquidated.

COMMENT #51: One commenter stated that proposed NEW RULE V was so sweeping that it will provide grounds for every bond to obtain relief from forfeiture because the power to arrest, when there is proof that the principal has fled, is still prohibited during the 90-day period, which would create havoc in and undermine the bail system in Montana and render it a virtual nullity.

RESPONSE #51: CSI appreciates the public comment. In adopting the proposed rules, CSI has removed the definition of "90-day surety arrest period" from proposed NEW RULE I and removed related provisions in proposed NEW RULES IV and V.

COMMENT #52: One commenter stated the proposed NEW RULE V(1) could unnecessarily restrict producers from paying a reward to an individual who is

currently a principal for information leading to the arrest of another principal who is fleeing or hiding from the producer and law enforcement.

RESPONSE #52: CSI appreciates the public comment. Rebating is generally prohibited in an insurance contract under 33-18-208, MCA.

COMMENT #53: One commenter stated that proposed NEW RULE V(1)(e) would not be needed if only currency were used to pay premiums.

RESPONSE #53: CSI appreciates the public comment. Premium is defined in 33-15-102(2), MCA, as, "the consideration for insurance, by whatever name called. Any assessment or membership, policy, survey, inspection, service, or similar fee or charge in consideration for an insurance contract is deemed part of the premium." The commenter's proposed change would be contrary to this statutory definition of "premium."

COMMENT #54: One commenter stated that proposed NEW RULE V(1)(f) is contrary to 46-9-510, MCA, and *Taylor v. Taintor*, 83 U.S. 366 (1872).

RESPONSE #54: CSI appreciates the public comment. The commenter has not demonstrated that proposed NEW RULE V(1)(f) is contrary to *Taylor v. Taintor*, and that case does not appear to be binding precedent that affects CSI's consideration of the proposed rule. However, in adopting the proposed rules, CSI has removed the definition of "90-day surety arrest period" from proposed NEW RULE I and removed related provisions in proposed NEW RULES IV and V, including proposed NEW RULE V(1)(f).

COMMENT #55: One commenter stated that a principal's breach of contract requirements for the principal to keep the producer informed of changes of address, phone number, or employment results in a higher risk of fleeing and that the producer should be allowed to warn the principal of breach of contract or to arrest the principal under proposed NEW RULE V.

RESPONSE #55: CSI appreciates the public comment. Nothing in the proposed rules prohibits a producer from warning a principal about an alleged or anticipated breach of contract requirements.

COMMENT #56: One commenter stated regarding proposed NEW RULE V that the state should have separate licenses for bail producers and bail enforcement agents, that the ability to produce a bond does not necessarily ensure an ability to engage in arrests, and that high training standards for licensing of bail enforcement agents would reduce current issues regarding bail enforcement.

RESPONSE #56: CSI appreciates the public comment. The proposed rules pertain only to surety insurance producers who sell, solicit, or negotiate commercial bail bonds and not to bail enforcement agents, those agents' abilities to engage in arrests, or those agents' training or licensing standards.

COMMENT #57: One commenter stated that the producer is an ally of the court, operates in the best interest of the court by guaranteeing the principal's appearance in court, and must be able to fulfill that obligation to the court, but that proposed NEW RULE V(1)(f) and (g)(vi) tie the hands of producers by limiting their ability to arrest at any time.

RESPONSE #57: CSI appreciates the public comment. In adopting the proposed rules, CSI has removed the definition of "90-day surety arrest period" from proposed NEW RULE I and removed related provisions in proposed NEW RULES IV and V, including proposed NEW RULE V(1)(f). CSI also has removed proposed NEW RULE V(1)(g), including proposed NEW RULE V(1)(g)(vi).

COMMENT #58: One commenter stated that proposed NEW RULE V(1)(g) provides examples of the increased risk to the producer that establishes legitimate reasons for re-arrest and surrender of the principal.

RESPONSE #58: CSI appreciates the public comment. In adopting the proposed rules, CSI has removed proposed NEW RULE V(1)(g).

COMMENT #59: One commenter stated that deferred premium payments, referenced in proposed NEW RULE V(1)(g)(ii), should not be allowed.

RESPONSE #59: CSI appreciates the public comment. Although deferred premium payments are referenced in proposed NEW RULE V(1)(g)(ii), please see the responses below specifically regarding deferred premium payments. In adopting the proposed rules, CSI has removed proposed NEW RULE V(1)(g).

COMMENT #60: Multiple commenters stated that deferred payments are the source of most complaints about the bail bonds industry.

RESPONSE #60: CSI appreciates the public comment. CSI is aware that deferred payments are a source of complaints about the bail bonds industry and has proposed rulemaking regarding deferred payments to give guidance to the industry, to proscribe against certain conduct, to prevent abuse against consumers, and to level the field in order to prevent unfair methods of competition.

COMMENT #61: One commenter stated that proposed NEW RULE VI should require up front payment of the total premium.

RESPONSE #61: CSI appreciates the public comment. The proposed rules would continue to allow deferred payments of premiums while providing reasonable safeguards for both consumers and the bail bonds industry.

COMMENT #62: Multiple commenters stated regarding proposed NEW RULE VI that it is necessary to have rules regarding deferred payments and that financing of bonds with interest should not be allowed. One commenter stated that, at a

minimum, producers should not be required to charge interest on a deferred payment. Another commenter stated that deferred payments unnecessarily build debt that could be used for fines, tow bills, and other costs.

RESPONSE #62: CSI appreciates the public comment and support for the rule. The proposed rules are reasonably necessary to provide safeguards for both consumers and the bail bonds industry, including ensuring that the interest rate be contained in the bond agreement.

COMMENT #63: One commenter stated regarding proposed NEW RULE VI that a deferred payment plan should be the same for all producers of no less than 50% down and payment of the balance in 20 days. One commenter stated that time paid bail is needed.

RESPONSE #63: CSI appreciates the public comment. The proposed rules permit flexibility for the deferred payment arrangements but require that those arrangements be contained in the bond agreement.

COMMENT #64: Multiple commenters stated that arrest for failure to pay a premium should be prohibited by rule, or even by statute, and that civil remedies should be addressed in small claims court or district court.

RESPONSE #64: CSI appreciates the public comment and support for the rule. The proposed rules are reasonably necessary to provide safeguards for both consumers and the bail bonds industry. The proposed rules do not address the civil remedies that may be pursued in small claims court or district court.

COMMENT #65: One commenter stated regarding proposed NEW RULE VII that if CSI is seeking uniformity in all forms then it should simply promulgate forms as other states have done, which would reduce minor recordkeeping errors that could result in violations.

RESPONSE #65: CSI appreciates the public comment. CSI will monitor the need for future rulemaking regarding promulgation of forms.

COMMENT #66: One commenter stated that there should be restrictions on the authority of CSI to fine or discipline a licensee to only when there is "actual customer harm" for an egregious recordkeeping violation.

RESPONSE #66: CSI appreciates the public comment. The consistent application of rules and statutes by producers requires that CSI retain the ability to take disciplinary actions against any producer who violates those rules and statutes, rather than being limited to certain violations by producers as described by the commenter.

COMMENT #67: One commenter questioned application of the language "a court claiming against the bond for a violation of the Code or Rules" in proposed NEW

RULE VIII and whether it applied in circumstances where a judgment is entered against an agent for violation of rule or statute during the time the bond was in effect, which the commenter believed would be limited to torts and not bail bond forfeitures. Another commenter questioned application of the language, "The aggregate liability of the SURETY may not exceed the amount of this surety bond," in proposed NEW RULE VIII and whether the surety's liability for the agent will not exceed the bond amount irrespective of whether an injured party files a lawsuit naming the surety or files a consumer complaint.

RESPONSE #67: CSI appreciates the public comment. In adopting the proposed rules, CSI is not adopting proposed NEW RULE VIII regarding the form for a surety bond for the producer.

COMMENT #68: One commenter stated that sureties and producers should be allowed to enforce their own conditions of a bond because those conditions may allow a bond to be posted for a defendant by a surety who might not otherwise be willing to post the bond.

RESPONSE #68: CSI appreciates the public comment. The proposed rules would give guidance to the industry, proscribe against certain conduct, prevent abuse against consumers, and level the field in order to prevent unfair methods of competition. The proposed rules also provide flexibility to producers and consumers regarding bail bond arrangements. As long as the conditions of a bond are consistent with the applicable rules and statutes, producers and consumers may negotiate the conditions of a bond.

COMMENT #69: One commenter stated that they believe "bounty hunters" or "fugitive recovery agents" need to be regulated as a separate industry but that CSI does not have authority over that industry and that regulation of that industry should not interfere with the ability of producers to arrest individuals they have on bond.

RESPONSE #69: CSI appreciates the public comment. The proposed rules pertain only to surety insurance producers who sell, solicit, or negotiate commercial bail bonds and not to "bounty hunters" or "fugitive recovery agents," over whom CSI does not have direct regulatory authority.

COMMENT #70: Multiple commenters stated that the proposed rules, if implemented, would make it impossible for sureties and producers to protect their bonds.

RESPONSE #70: CSI appreciates the public comment. The insurance industry has been able to adapt over the years to changes in both state and federal regulations, as well as changes in consumer needs. The proposed rules would provide additional structure to existing statute and protection for both the industry and consumers against bad actors. CSI has received no specific information demonstrating that it would be impossible for sureties and producers to protect their bonds.

COMMENT #71: One commenter stated that they had previously proposed a review board comprised of a CSI representative and senior surety bail agents to administer penalties to bad actors in the bail bond industry.

RESPONSE #71: CSI appreciates the public comment. Although that particular recommendation was not incorporated in the proposed rules, CSI appreciates the commenter's recognition of the importance of disciplinary actions against bad actors in the bail bond industry.

COMMENT #72: One commenter stated that producers should have the opportunity to revoke for a federal charge arrest in case the principal disappears.

RESPONSE #72: CSI appreciates the public comment. The proposed rules apply to all bonds in Montana.

COMMENT #73: One commenter stated that regulation is needed in light of the bail bond industry's work with people with disabilities and low-income people.

RESPONSE #73: CSI appreciates the public comment and the support for the proposed rules. The proposed rules protect both consumers and members of the bail bond industry.

COMMENT #74: One commenter stated that they do not accept cosigners whose only source of income is disability payments, but that a small minority of bail bond industry members do accept cosigners who only have disability income or minimal assets, sometimes on only 5% payment, which is contrary to statute and which is when most of the complaints arise.

RESPONSE #74: CSI appreciates the public comment. The proposed rules protect both consumers and members of the bail bond industry.

COMMENT #75: One commenter questioned where to obtain the small business impact analysis required by 2-4-111, MCA.

RESPONSE #75: CSI appreciates the public comment. The small business impact analysis is available by request to CSI.

/s/ Robert Stutz

Robert Stutz  
Rule Reviewer

/s/ Michelle Dietrich

Michelle Dietrich  
Deputy Chief Legal Counsel

Certified to the Secretary of State April 6, 2021.



BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On November 6, 2020, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-534 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1953 of the 2020 Montana Administrative Register, Issue Number 21.
2. A public hearing on the notice of proposed adoption and amendment of the above-stated rules was held on November 30, 2020.
3. The commission received many public comments both in support of the proposal and in opposition to the proposal. The commission opted to not adopt the proposal and instead passed a motion that directed the department to arrange a citizen advisory committee that could suggest alternative restrictions for the Boulder River.

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

/s/ Lesley Robinson  
Lesley Robinson  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State April 6, 2021.

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption of New     )  
Rule I pertaining to the use of remote-    )  
controlled devices and drones while       )  
fishing    )

NOTICE OF DECISION ON  
PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 6, 2020, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-535 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1956 of the 2020 Montana Administrative Register, Issue Number 21.

2. A public hearing on the notice of proposed adoption of the above-stated rule was held on December 1, 2020.

3. The commission felt there was not enough information on the issue for them to move forward with the proposal at this time. The commission did indicate it would consider a proposal in the future if the department were to bring forward more compelling information and consider other alternatives such as a possible ban of remote-controlled devices on rivers but not lakes, and provide corresponding specific rule language for the commission to consider.

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

/s/ Lesley Robinson  
Lesley Robinson  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State April 6, 2021.

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption of New     ) NOTICE OF ADOPTION AND  
Rule I and the amendment of ARM     ) AMENDMENT  
12.11.501 pertaining to limiting Tepee     )  
Lake to manually operated watercraft     )

TO: All Concerned Persons

1. On December 11, 2020, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-537 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 2226 of the 2020 Montana Administrative Register, Issue Number 23.

2. The commission has adopted the above-stated rule as proposed, but with the following changes from the original proposal in order for the language to be consistent with other administrative rules with a restriction on motorized use, new matter underlined, deleted matter interlined:

NEW RULE I (12.11.2225) TEPEE LAKE (1) Tepee Lake is located in Flathead County.

(2) Tepee Lake is closed to use for any motor-propelled watercraft ~~limited to manually operated watercraft.~~

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

3. The commission has amended the above-stated rule as proposed, but with the following changes in order to correct the numbering as the list of water bodies has changed since this rule was proposed, 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 (109) remain as proposed.

~~(110) Tepee Lake~~ [NEW RULE I]

~~(112) Tepee Lake~~ ARM 12.11.2225

(110) through (120) remain as proposed but are renumbered (113) through (123).

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

4. 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: All comments received by the commission on the proposed rulemaking were in support. Comments referenced protection and preservation of the shallow and narrow lake, protection of species including the Common Loon, the lake's serenity and natural beauty, the potential for stirring up silt and mud, the safety of recreationists, the wear and traffic on Tepee Lake road, the abundance of motorized opportunities on other nearby waterbodies, and the fact that currently no motorized use occurs on the lake.

RESPONSE #1: The commission appreciates the participation and support in this rulemaking process.

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

/s/ Lesley Robinson  
Lesley Robinson  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State April 6, 2021.

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

In the matter of the adoption of an                    ) NOTICE OF ADOPTION OF AN  
emergency rule closing the                            ) EMERGENCY RULE  
Springdale Bridge Fishing Access                    )  
Site in Park County                                    )

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Springdale Bridge Fishing Access Site in Park County:

(a) Yesterday evening, a wildland fire started in the Springdale Bridge Fishing Access Site.

(b) The site is extremely dangerous due to smoldering ground, high winds, and unstable burned trees that could fall at any time. Persons recreating in the site could be in danger of:

(i) becoming surrounded and trapped by fire should the smoldering ground flare up;

(ii) being hit by a falling tree;

(iii) becoming a potential burden to fire crews; or

(iv) death.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 7 of the 2021 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on April 30, 2021, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

3. The temporary emergency rule is effective March 29, 2021, when this rule notice is filed with the Secretary of State.

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

RULE I SPRINGDALE BRIDGE FISHING ACCESS SITE TEMPORARY  
EMERGENCY CLOSURE (1) The Springdale Bridge Fishing Access Site is located in Park County.

(2) The Springdale Bridge Fishing Access Site is closed to all public occupation and recreation.

(3) This rule is effective as long as there are dangers from the fire in the Springdale Bridge Fishing Access Site.

(4) This rule will expire as soon as the department determines the Springdale Bridge Fishing Access Site is again safe for occupation and recreation. Signs restricting use of the Springdale Bridge Fishing Access Site will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA

IMP: 2-4-303, 87-1-202, MCA

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

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jay Pape, Department of Fish, Wildlife and Parks, 1400 S. 19th Avenue, Bozeman, MT 59718; or e-mail [jpape@mt.gov](mailto:jpape@mt.gov). Any comments must be received no later than May 14, 2021.

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

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

/s/ Hank Worsch

Hank Worsch

Director

Department of Fish, Wildlife and Parks

/s/ Rebecca Dockter

Rebecca Dockter

Rule Reviewer

Certified to the Secretary of State March 29, 2021.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of                    ) NOTICE OF AMENDMENT  
ARM 24.207.504 approval of                         )  
qualifying and continuing education                )  
courses    )

TO: All Concerned Persons

1. On January 29, 2021, the Board of Real Estate Appraisers published MAR Notice No. 24-207-44 regarding the public hearing on the proposed amendment of the above-stated rule, at page 108 of the 2021 Montana Administrative Register, Issue No. 2.
2. On February 23, 2021, a public hearing was held on the proposed amendment of the above-stated rule in Helena via the remote conferencing platform. No comments were received by the February 26, 2021 deadline.
3. The board has amended ARM 24.207.504 exactly as proposed.

BOARD OF REAL ESTATE APPRAISERS  
PETER FONTANA  
CERTIFIED RESIDENTIAL APPRAISER  
PRESIDING OFFICER

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

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

Certified to the Secretary of State April 6, 2021.

## **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 December 31, 2020. This table includes notices in which those rules adopted during the period October 23, 2020, through March 26, 2021, 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 December 31, 2020, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2020 or 2021 Montana Administrative Registers.

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

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SECRETARY OF STATE

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