

# MONTANA ADMINISTRATIVE REGISTER

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# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 3

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE BOARD OF PARDONS AND PAROLE  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PUBLIC HEARING ON
RULES I and II; the amendment of	)	PROPOSED ADOPTION,
ARM 20.25.101, 20.25.102,	)	AMENDMENT, AND REPEAL
20.25.103, 20.25.201, 20.25.306,	)	
20.25.307, 20.25.401, 20.25.402,	)	
20.25.501, 20.25.504, 20.25.601,	)	
20.25.702, 20.25.801, 20.25.901,	)	
20.25.902, 20.25.903, 20.25.904; and	)	
the repeal of ARM 20.25.202 and	)	
20.25.505 pertaining to Board of	)	
Pardons and Parole paroling	)	
decision, early parole consideration,	)	
administrative reviews and	)	
reappearances, board operating	)	
processes, and executive clemency	)	
functions	)	

TO: All Concerned Persons

1. On March 3, 2022, at 11:00 a.m., the Board of Pardons and Parole (board) will hold a public hearing via remote conferencing to consider the proposed adoption, amendment, and repeal of the above-stated rules. 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/85608440204?pwd=b1RRL0dBNWM2VldmRmpIckRYY1VYZz09>, Meeting ID: 856 0844 0204, Password: 815162; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656.

The hearing will begin with a brief introduction by board or Department of Corrections staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is the participant's time to speak.

2. The board 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 of Corrections no later than 5:00 p.m. on February 24, 2022, to advise us of the nature of the accommodation that you need. Please contact Griffin Burns, Department of Corrections, P. O. Box 201301, 5 South Last Chance Gulch, Helena, Montana, 59620-1301; telephone (406) 444-1551; or e-mail [griffin.burns@mt.gov](mailto:griffin.burns@mt.gov).

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

NEW RULE I EARLY CONSIDERATION (1) Whenever an offender's next scheduled administrative review is more than one year away, the offender may submit to the board a request for early consideration stating new information or change in circumstances that bears on their suitability for parole. An offender may not submit more than one request for early consideration annually.

(2) The passage of time alone is not considered new information.

(3) The board will screen the request to confirm that one of the following criteria for early consideration is met:

(a) a change in the offender's status since the last parole consideration tending to demonstrate the offender's ability and willingness to fulfill the obligations of a law-abiding member of the public;

(b) the offender has completed treatment or an educational program;

(c) the offender has fulfilled other conditions ordered by the hearing panel or has been unable to fulfill them due to factors outside the offender's control;

(d) the hearing panel's previous disposition was based on erroneous information or misinformation;

(e) the offender has developed a suitable release plan or there has been a substantial change in the offender's previous release plan to warrant reconsideration;

(f) the victim or community no longer objects to the offender's release; or

(g) correctional staff has made a recommendation for earlier administrative review or reappearance.

(4) If the offender meets one of the criteria in (3) the board will exercise its discretion to determine whether to grant early consideration.

(5) If the request is denied, the notice to the offender will state the reasons for the denial. If the request is granted, the notice will state the date on which the administrative review will be conducted.

AUTH: 46-23-201, 46-23-218, MCA

IMP: 46-23-201, 46-23-218, 46-24-212, MCA

REASON: The proposed new rule is extracted from ARM 20.25.402 and placed in a separate rule for organizational and clarification purposes. The rule contained several related but distinct topics that made the rule unclear. Separating the topic of early consideration from the topics of administrative reviews and reappearances was warranted for that reason. The substantive changes from the language contained in ARM 20.25.402 include that NEW RULE I limits the number of requests an offender can submit for early consideration to one per year. In addition, the criterion for early consideration in ARM 20.25.402(6)(c)(ii) is purposely omitted from this break-out rule. Other changes to language extracted from ARM 20.25.402 and inserted into NEW RULE I are of a housekeeping nature or for clarification purposes.

NEW RULE II BOARD RESPONSES TO PAROLE VIOLATIONS (1) Upon receipt of a report of violation from the department pursuant to 46-23-1024 and 46-23-1025, MCA, the board will:

(a) review the report and any supporting documentation;

- (b) promptly schedule a revocation hearing;
- (c) determine whether any violation is established; and
- (d) for any established violation, determine the type of violation, either compliance or non-compliance.

(2) For established compliance violation(s), the board will determine whether the Montana incentives and interventions grid (MIIG) was exhausted and, if not, refer the matter back to the department.

(3) For established compliance and non-compliance violations, the board will issue a disposition in accordance with the appropriate subsection(s) of 46-23-1025, MCA or other appropriate order.

AUTH: 46-23-201, 46-23-218, MCA

IMP: 46-23-1028, MCA

REASON: The rule is reasonably necessary to implement the statutory requirement pertaining to exhaustion of the Montana Incentives and Interventions Grid (MIIG) which, in general, is a prerequisite to revocation.

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

20.25.101 ORGANIZATION OF THE BOARD (1) The board is a quasi-judicial body and for the purpose of 2-15-124, MCA, except that board members are full-time employees and are compensated in accordance with 46-23-104 and 46-23-111, MCA. Terms of board members are staggered in accordance with 2-15-2405, MCA, and the provisions of 2-15-124(1), MCA do not apply to the board. The board is allocated ~~administratively attached~~ to the Department of Corrections for administrative purposes only under 2-15-121 and 2-15-2305, MCA. The board consists of seven members who are appointed by the governor. The board shall make recommendations on executive clemency and administer parole processes and procedures, and ensure the effective application of and improvements to the clemency and release system as well as of the laws upon which they are based.

(2) The board chair is specifically designated by the governor in accordance with 2-15-124, MCA. The governor may designate a different presiding officer at any time and the former presiding officer will continue to serve as a board member unless removed for cause pursuant to 2-15-124(6), MCA and the vice chair is designated by a majority vote of the board. The vice chair chair may designate another board member to assume ~~assumes~~ the duties of the chair when the chair is not present. ~~Individual board members shall, prior to hearing a case, disclose any conflict of interest and recuse themselves in cases in which it has been determined that a conflict of interest is clearly identified.~~

(3) ~~The board's main office is located in Deer Lodge, Montana. Individual board members shall, prior to hearing a case, disclose any conflict of interest and recuse themselves in cases in which it has been determined that a conflict of interest is clearly identified.~~

(4) ~~The board, by majority vote of all members, hires an executive director, who oversees the day-to-day financial, administrative, and personnel policies and~~

~~procedures of the board. The executive director also coordinates board member, hearing panel, and board staff work schedules, and fulfills other duties as assigned by the board chair. The executive director hires board staff as deemed necessary and as provided by legislative appropriation. Board administrative personnel represent the board in official board actions. All board personnel are state employees with all the benefits and protections afforded state employees.~~

~~(5)~~(4) The board will ~~meet at least monthly to~~ conduct hearings weekly and transact its business daily. The board may conduct meetings and hearings at any location suitable for that purpose.

(6) through (8) remain the same but are renumbered (5) through (7).

~~(9)~~(8) The board ~~executive director chair, in consultation with the board,~~ will maintain, review, and update at least annually a written description and an organizational chart that accurately reflects the structure of authority, responsibility, and accountability within the board.

AUTH: 46-23-218, MCA

IMP: 2-15-121, 2-15-124, 2-15-2302, 2-15-2405, 46-23-104, 46-23-111, MCA

REASON: Changes to this rule were necessitated by legislative amendments regarding the board itself and the elimination of the executive director position. Information relating to conflict of interest was extracted from a section unrelated to that topic and inserted into a separate section for clarity. An ambiguous and imprecise statement to the effect that administrative personnel represent the board in official board actions was stricken from the rule. One of the current criteria for granting or denying early consideration relates to "clear conduct" of the offender. That criteria has been deleted from the rule because it is a potentially artificial barrier to an otherwise appropriate early consideration. Elimination of the clear conduct criteria only means that institution conduct will not necessarily disqualify the offender from being granted early consideration but it may still be considered by the board.

20.25.102 BOARD TRAINING (1) All board members shall receive training in accordance with 46-23-218, MCA, that addresses the following disproportionate representation of American Indians issues: in the legal custody of the department.

~~(a) the cultures and problems of Montana tribes and reservations;~~  
~~(b) statistical and comparative data regarding correctional populations;~~  
~~(c) distinctions between urban and reservation populations; and~~  
~~(d) federal, state, and local community services available to paroled or discharged American Indian offenders.~~

~~(2) A board member who has not received training regarding American Indian issues may not hear or decide American Indian cases until the member has completed the training.~~

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

~~(4)~~(3) Before participating on a hearing panel, a new board member must receive orientation from board staff or board member regarding:

(a) remains the same.

(b) offender pathology, treatment, and supervision including American Indian issues as related to each; and

(c) remains the same.

~~(5)(4) The executive director in consultation with the board chair~~ The board will develop, evaluate, and update training curricula annually based on the board's needs.

AUTH: 46-23-218, MCA

IMP: 46-23-218, MCA

REASON: The proposed amendments eliminate language that, in violation of 2-4-305, MCA, unnecessarily repeats what is contained in statute.

20.25.103 DISSEMINATION OF INFORMATION (1) ~~As a public agency, all board records including any audio/video recordings are public. All board records are subject to disclosure except in cases in which the individual right of privacy clearly exceeds the merits of public disclosure, and in cases in which statute makes the record confidential. The department and board shall keep a record of the board's acts and decisions in accordance with 46-23-110 and 46-23-1025, MCA. A recording may not personally identify the victim without the victim's consent.~~

(2) ~~An individual will have a right of privacy if the person has a reasonable expectation of privacy in the material and society is willing to recognize that expectation as reasonable. Members of the public may request a copy of the public records of the board as provided in 2-6-1003, 2-6-1006, 2-6-1007, and 46-23-110, MCA. The board may assert an individual's privacy interest on their behalf relating to content that implicates personal privacy or safety interests that clearly exceed the merits of public disclosure. That information will not be released.~~

(3) ~~The board may limit the time and place that records may be inspected or copied in accordance with 46-23-110, MCA. The courts have ruled that the rights society recognizes as reasonable include but are not limited to:~~

~~(a) information that, if released, would create a risk of physical harm to a person;~~

~~(b) information that, if released, would create a safety or security risk to a correctional facility;~~

~~(c) personal medical information; and~~

~~(d) personal personnel information.~~

~~(4) When someone requests board records, the board's executive director or designee will conduct an analysis of the requested material and determine whether, in the executive director's opinion, any information contains an individual privacy interest that clearly exceeds the merits of public disclosure.~~

~~(5) The executive director or the board may assert a claim of individual privacy on behalf of an individual if the board executive director believes requested information contains a reasonable privacy interest that exceeds the merits of public disclosure. The board executive director will attempt to notify the individual to advise the individual of the request for information and ascertain if the individual agrees with or objects to the release of the information. If notification is not possible, the board executive director will independently weigh the privacy interest against the public's right to know to determine if the board should release the information.~~

(6) and (7) remain the same but are renumbered (4) and (5).

~~(8)(6)~~ The executive director or the board may not disseminate to the public any information directly or indirectly identifying the victim of the following sex crimes:

- ~~(a) 45-5-502, MCA (Sexual Assault);~~
- ~~(b) 45-5-503, MCA (Sexual Intercourse Without Consent);~~
- ~~(c) 45-5-504, MCA (Indecent Exposure); or~~
- ~~(d) 45-5-507, MCA (Incest); MCA;~~
- ~~(e) 45-5-702, MCA (Trafficking);~~
- ~~(f) 45-5-703, MCA (Involuntary Servitude);~~
- ~~(g) 45-5-704, MCA (Sexual Servitude); or~~
- ~~(h) 45-5-705, MCA (Patronizing Victim of Sexual Servitude).~~

~~(9) The executive director or the board will disseminate research findings to all appropriate parties. The executive director or designee must approve all dissemination of research data. All research dissemination must consider the potential effect of the security and operation of correctional facilities, the public, and the operational integrity of the board. Privacy interests of offenders and other parties for cases under study will be ensured when research projects are considered.~~

~~(10)(7)~~ When releasing board records the executive director or the board chair will consult with board legal counsel when as necessary.

(11) remains the same but is renumbered (8).

~~(12) The board may charge 10 cents per page for each page the board produces.~~

AUTH: 46-23-218, MCA

IMP: ~~2-6-102, 2-6-1003, 2-6-1006, 2-6-1007, 44-5-311, 46-18-243, 46-23-110, 46-23-218, 46-23-1025, MCA~~

REASON: The amendments are primarily of a housekeeping or administrative nature. Additional criminal offenses established by law have been added to (8) which is renumbered (6). Section (12) is being deleted because in violation of 2-4-305, MCA, it unnecessarily repeats what is contained in statute.

20.25.201 OBJECTIVES (1) and (2) remain the same.

~~(3) If the department, after it utilizes its screening process, transfers an offender from prison to prerelease or a community based treatment program before the offender is eligible for parole, when the offender becomes eligible for parole, a hearing panel, after review of the entire offender file or summary, will conduct an impartial hearing. The board's primary responsibility in making decisions about parole and executive clemency is public safety. The board applies Montana law in affording offenders with impartial hearings, respecting offender rights, and considering the safety of victims and the public.~~

(4) remains the same.

AUTH: 46-23-218, MCA

IMP: 46-23-201, MCA

REASON: Section (3) is being amended to eliminate language regarding transfers

of offenders from prison to prerelease centers or to community treatment programs for pre-parole programming or controlled inmate worker assignments. The department initiates those processes under its own distinct legal authority. The board participates in screening and may endorse the transfers, but it is not the source of the legal authority for them. For that reason, the stricken language need not and should not be part of the board's rule.

20.25.306 PAROLE PLAN (1) The board through its pre-parole program, will make available to offenders a copy of a packet outlining the parole process and the recommended ~~treatment~~ parole release plan. ~~The board, through its staff, may review and amend an offender's recommended parole release plan as necessary and advise the offender when it changes its recommendations.~~

(2) and (3) remain the same.

AUTH: 46-23-218, MCA

IMP: 46-23-215, 46-23-216, MCA

REASON: The proposed amendments are for clarification and administrative processing purposes.

20.25.307 MEDICAL PAROLE (1) Except for an offender under sentence of death or of life imprisonment without the possibility of parole, a hearing panel may release an offender on medical parole in accordance with 46-23-210, MCA.:

~~(a) a Montana offender confined in a prison or the state hospital;~~

~~(b) a Montana offender confined in prerelease or other community corrections program; or~~

~~(c) an offender for whom the court has restricted parole for a number of years under 46-18-202(2), MCA, but who has obtained the approval of the sentencing court. If the sentencing court does not respond within 30 days to a written request for medical parole consideration from the department, the offender is considered to be approved by the court for medical parole.~~

(2) An offender or other party specified in 46-23-210, MCA, may submit an application for the offender's medical parole. The board, the department, the offender, or the offender's spouse, parent, child, grandparent, or sibling may submit an application for medical parole. The application must include the information required in 46-23-210, MCA. contain the following:

~~(a) details of the offender's proposed living arrangement on medical parole;~~

~~(b) details of how the offender will acquire and pay for medical care while the offender is on medical parole;~~

~~(c) a report of an examination and written diagnosis by a licensed physician that includes:~~

~~(i) a detailed description of the offender's medical condition and the medical attention required to treat that condition;~~

~~(ii) an assessment of the offender's likelihood of recovery;~~

~~(iii) a description of the offender's most recent past medical condition and treatment; and~~

~~(iv) an assessment of whether, to a reasonable degree of medical certainty,~~

~~there is a high probability the offender's medical condition will cause death within six months or less.~~

(3) through (6) remain the same.

~~(7) The hearing panel shall require as a condition of medical parole that the offender agree to placement in a setting chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The hearing panel may require as a condition of parole that the offender agree to periodic examinations and diagnosis at the offender's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the offender's physical capacity has improved to the extent that the offender is likely to pose a possible detriment to society, a hearing panel may revoke the medical parole and return the offender to the custody of the department.~~

~~(8)~~(7) Prior to the medical parole hearing, the board, ~~through its staff~~, shall gather for a hearing panel's deliberations, all pertinent information on the offender, including but not limited to the nature of the offense, social history, criminal history, institutional performance, and any medical and mental examinations which may have been made while in custody.

(9) through (13) remain the same but are renumbered (8) through (12).

AUTH: 46-23-218, MCA

IMP: 46-23-210, MCA

REASON: Amendments eliminate provisions that, in violation of 2-4-305, MCA, unnecessarily repeat what is in statute.

20.25.401 HEARING PROCEDURE ~~(1) An eligible offender may apply and come before a hearing panel or an out of state releasing authority for nonmedical parole consideration within two months of time fixed by law as calculated by the prison records department. During the parole hearing the hearing panel will consider all pertinent information regarding each eligible offender, including the factors set forth in ARM 20.25.505(2).~~

~~(2)~~(1) The presiding hearing panel member shall conduct hearings informally and shall have discretion to allow or not allow any proposed ~~testimony witness statements on recognized legal grounds.~~ Board staff The board shall make a ~~video and audio record~~ recording of all hearings in accordance with 46-23-110, MCA.

~~(3)~~(2) Interested persons who wish to appear before the hearing panel must: comply with board requirements as posted on its website including:

(a) and (b) remain the same.

(4) through (13) remain the same but are renumbered (3) through (12).

AUTH: 46-23-218, MCA

IMP: 46-23-202, 46-23-203, 46-23-204, MCA

REASON: The proposed amendments are of a housekeeping or operational nature, e.g., describing how the board conducts business. The amendments do not represent substantive changes to the current rule.

20.25.402 ADMINISTRATIVE REVIEW, AND REAPPEARANCE, AND EARLY REVIEW (1) After the initial parole hearing, if the hearing panel does not grant a parole it may set a date on which the offender may reappear for a subsequent parole hearing. If the hearing panel does not set a reappearance date, an administrative review of the offender's case will be conducted at intervals as outlined below: If the hearing panel does not grant parole at the initial parole hearing, the hearing panel shall set either a reappearance or an administrative review in accordance with 46-23-201(5), MCA. If an administrative review is set, it will be conducted in accordance with the following:

(a) remains the same.

(b) For the administrative review, board prison staff will prepare and submit to the board, a report outlining the offender's developments, including the offender's progress and conduct since the last consideration and present the information to the board.

~~(2) Unless the offender presents good cause for earlier administrative review pursuant to (6), the reviews will be conducted according to the following schedule or as otherwise ordered by the hearing panel, but in any case, not to exceed six years.~~

~~(a) If the offender's prison discharge date is less than five years away, the offender's case will be reviewed no less than annually.~~

~~(b) If the offender's prison discharge date is between five and ten years away, the offender's case will be reviewed no less than every three years.~~

~~(3) If the offender's prison discharge date is ten or more years away, the offender will be scheduled for a hearing before the board no less than every six years.~~

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

~~(6) Whenever the scheduled administrative review is over one year away, the offender may submit to board staff a request for early administrative review if the offender can show new information or a change in circumstances that would affect suitability for parole.~~

~~(a) The passage of time alone is not considered new information.~~

~~(b) The offender may not submit more than one request every six months for earlier administrative review.~~

~~(c) Staff will screen the request and determine if one of the following criteria is met:~~

~~(i) a change in the offender's status since the last administrative review that would demonstrate that the offender is able and willing to fulfill the obligations of a law-abiding citizen;~~

~~(ii) the offender has maintained good conduct and if not, the nature and severity of the misconduct is negligible;~~

~~(iii) the offender has completed treatment or educational programs;~~

~~(iv) the offender has fulfilled other conditions ordered by the hearing panel or has been unable to fulfill them due to factors outside the offender's control;~~

~~(v) the hearing panel's previous disposition was based on erroneous information or misinformation;~~

~~(vi) the offender has developed a suitable release plan or there has been a substantial change in the offender's previous release plan to warrant~~

reconsideration;

~~(vii) the victim or community no longer objects to the offender's release; or~~

~~(viii) correctional staff has made a recommendation for earlier administrative review.~~

~~(d) If the board staff determines the offender meets one of the above listed criteria, it will refer the request for early review to the board chair or designee to determine whether to schedule an early review. Board staff may not refer an offender for early administrative review if the offender has been involved in multiple or major misconduct since a hearing panel's last hearing or administrative review or a hearing panel has specifically prohibited early administrative review.~~

~~(e) Board staff will notify the offender in writing if early review has been granted or denied. If the request is denied the notice to the offender will state the reasons for the denial. If the request is granted, the notice will state the date on which the review will be conducted.~~

AUTH: 46-23-201, 46-23-218, MCA

IMP: 46-23-201, 46-23-218, 46-24-212, MCA

REASON: The proposed amendments are primarily for operational, housekeeping, or clarification purposes. Section (6) has been deleted altogether from ARM 20.25.402 and has been inserted into NEW RULE I with minor modifications for the reason stated therein.

20.25.501 DECISION AND RECONSIDERATION (1) A final decision of the hearing panel must be by a majority vote, must be in writing, and must be signed by at least two panel members. The board will not grant early consideration.

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

~~(d) continue the offender to a subsequent reconsideration hearing at an interval consistent with ARM 20.25.402 or [NEW RULE I]; (2) and (3), but in any case not to exceed six years. The hearing panel may order that the offender is not subject to administrative review except as provided in ARM 20.25.402(6).~~

(e) remains the same.

(f) pass the offender to discharge in accordance with the schedule listed in 46-23-201, MCA, if the date of discharge is less than six years away or if the offender has requested to serve to discharge.

(3) through (5) remain the same.

~~(6) If a two member hearing panel is unable to reach a unanimous decision, the board chair shall appoint a third member to consider all pertinent information and render a final decision.~~

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

~~(8)(7)~~ A duly constituted hearing panel will make the following administrative decisions at the board's monthly business meeting after panel members have reviewed the offender's case record. These decisions do not require the approval of the members who made the most recent parole determination:

(a) through (f) remain the same.

AUTH: 46-23-218, MCA

IMP: 46-23-104, 46-23-201, 46-24-212, MCA

REASON: The amendments are of a housekeeping nature and are made to maintain consistency with amendments being made to ARM 20.25.402.

20.25.504 INVESTIGATION (1) Before a hearing panel considers an offender for release on parole, the board ~~staff will make~~ shall consider, at a minimum, the following information provided by the department pursuant to 46-23-203, MCA, and outlined in 46-23-208(4), MCA. available for the panel's consideration:

- ~~(a) the offender's previous social history and criminal record;~~
  - ~~(b) the offender's education, conduct, and associations;~~
  - ~~(c) the offender's occupation or prospects for employment;~~
  - ~~(d) the offender's treatment record in prison;~~
  - ~~(e) facts and circumstances of the crime for which the offender was sentenced;~~
  - ~~(f) information received from the community where the crime was committed;~~
  - ~~and~~
  - ~~(g) any reports of physical or mental examinations which have been made of the offender.~~
- (2) remains the same.

AUTH: 46-23-218, MCA

IMP: 46-23-107, 46-23-203, 46-23-208, MCA

REASON: The rule is being amended to eliminate language that, in violation of 2-4-305, MCA, unnecessarily repeats what is in statute. Additional implementation citations that had been previously overlooked are included.

20.25.601 RECISSION HEARING (1) through (3) remain the same.

(4) In lieu of scheduling a rescission hearing the board, ~~through its staff~~, may delay the offender's release from confinement for up to 120 days for the reasons listed in (1).

(5) remains the same.

AUTH: 46-23-218, MCA

IMP: 46-23-218, MCA

REASON: The representation in (4) that staff is allowed to delay an offender release from confinement is erroneous and is being deleted.

20.25.702 CONDITIONS OF SUPERVISION (1) remains the same.

(2) A parolee shall pay a supervisory supervision fee in accordance with 46-23-1021, MCA ~~of at least \$10 a month for each month under supervision. A hearing panel may reduce or waive the fee or suspend the monthly payment if payment would cause the parolee significant financial hardship.~~

(3) through (5) remain the same.

AUTH: 46-23-218, MCA  
IMP: 46-23-215, 46-23-1021, MCA

REASON: The proposed amendment in (2) eliminates language that merely duplicates what is in statute contrary to 2-4-305, MCA. An additional implementation citation that was previously overlooked is being included now by amendment.

20.25.801 ON-SITE HEARING AND REVOCATION OF PAROLE

(1) through (11) remain the same.

(12) ~~Unless the parolee waives the revocation hearing, the board will schedule a revocation hearing within 90 days of receipt of the on-site hearing summary or of receipt of notice of conviction or return to Montana custody.~~ If the parolee waives the revocation hearing the parolee must sign a waiver that clearly specifies the rights the parolee is relinquishing. Once the hearing is scheduled, the parolee may request a continuance and board staff may grant the continuance if the parolee ~~can show~~ has shown good and substantial cause for the continuance.

(13) and (14) remain the same.

(15) The presiding hearing panel member will conduct the revocation hearing and will make an audio ~~and~~ or video record of the hearing. Violations warranting a revocation decision must have been established by a preponderance of the evidence. ~~The decision of the board in a revocation hearing is by a preponderance of the evidence.~~ The board may consider:

(a) through (c) remain the same.

(16) ~~If the board decides the parolee has violated parole, the hearing panel may, considering the nature of the violations and the criteria for release grant decision, take any of the following actions:~~

- ~~(a) continue the parolee on parole with release to the community;~~
- ~~(b) continue the parolee on parole, but authorize the parolee's detention in custody until the parolee satisfies conditions imposed by the board;~~
- ~~(c) revoke the parole and set no re-parole date;~~
- ~~(d) revoke the parole, but order the offender's re-parole on a date certain;~~
- ~~(e) revoke the parole and set a date within one year when a board hearing panel will conduct an administrative review of the offender's case; or~~
- ~~(f) make any other appropriate order.~~

(16) When conducting on-site hearings and other activities preparatory to a parole revocation hearing, probation and parole officers remain the employees of and under the supervision of the Montana Department of Corrections and not of the Board of Pardons and Parole.

AUTH: 46-23-218, MCA  
IMP: 46-23-215; 46-23-1024; 46-23-1025, MCA

REASON: On-site hearings are a function of the Department of Corrections (department). On-site hearings conducted by department personnel are an integral part of the board's parole revocation process and are included with the board's administrative rules for that reason. A new (16) has been added to clarify that

irrespective of their parole revocation-related activities, probation and parole officers remain the employees of and under the supervision of the department and not the Board of Pardons and Parole.

20.25.901 APPLICATIONS FOR CLEMENCY (1) through (4)(a) remain the same.

(i) Board staff will first assess whether an application is substantively similar to a previous application. ~~The staff shall submit a report to the hearing panel with its assessment of whether the application is substantively similar to a previous application.~~

(ii) through (b) remain the same.

(c) Upon completion of its assessment, the board shall ~~within ten working days~~ forward to the Governor's office its recommendation to grant or deny clemency, together with all relevant documents. The board shall also forward to the Governor's office a proposed executive order if its recommendation is to grant clemency. If the board's recommendation is to deny clemency, it shall forward to the Governor's office and the applicant a board-recommended disposition summarizing the reasons for denial.

(d) through (6) remain the same.

AUTH: 46-23-218, MCA

IMP: 46-23-301, MCA

REASON: The proposed amendments are housekeeping in nature and pertain to internal operating processes of the board.

20.25.902 INVESTIGATIONS FOR CLEMENCY AND ORDER FOR HEARING (1) In cases in which the death penalty has not been imposed, a hearing panel of the board ~~staff will shall~~ conduct a preliminary review of the application for clemency and ~~submit a report to a hearing panel for its consideration.~~

(a) The hearing panel, based on its ~~the staff's~~ preliminary review, may accept or reject the application. The panel will base its decision to accept or reject an application on:

(i) through (b) remain the same.

(c) If a hearing panel decides to accept the application, it will ~~request the department to~~ conduct an investigation ~~within 90 days of its request~~. The hearing panel may request a psychological evaluation of the applicant and any other reports the panel deems necessary as part of the investigation.

~~(i) Within 90 days of receiving the investigation report, board staff will compile all the information for a hearing panel's consideration and make a recommendation to the panel that the panel either reject the application or order a hearing on the application.~~

~~(ii) The panel may require other reports that, in the panel's opinion, are necessary.~~

~~(d) After receipt of the investigation report, the board staff's recommendation, and any other reports the panel has required, investigation, a hearing panel shall will consider the application and decide whether to hold a hearing on the application.~~

(e) through (2) remain the same.

AUTH: 46-23-218, MCA  
IMP: 46-23-301, 46-23-302, MCA

REASON: The amendments are of a housekeeping nature to properly reflect the board's operational processes. The amendments do not represent substantive changes to the current rule.

20.25.903 HEARING PROCEDURE FOR CLEMENCY (1) through (3) remain the same.

(4) Applicants may be represented by counsel at their own expense. ~~An indigent applicant may request counsel if difficult or complex issues are present and if the applicant is unable to articulate the issues. A decision on the request for appointed counsel will be rendered by the presiding hearing panel member after due consideration.~~

(5) remains the same.

AUTH: 46-23-218, MCA  
IMP: 46-23-301, 46-23-306, MCA

REASON: The board has neither the legislative authority nor the budget to appoint counsel for offenders appearing before it. Representations to the contrary in (4) are being eliminated from the rule. Section 46-23-301, MCA is being added as an implementation citation because it was previously overlooked and omitted in error.

20.25.904 RECOMMENDATION CONCERNING CLEMENCY (1) and (1)(a) remain the same.

(b) The hearing panel shall ~~within ten working days~~ forward to the Governor's office its recommendation to grant or deny clemency, together with all relevant documents for the Governor's final determination. If the hearing panel makes a recommendation that the Governor grant clemency, it shall also forward a proposed executive order to the Governor's office. If the panel does not recommend clemency, it will forward a board-recommended disposition summarizing the reasons for denial.

(c) and (2) remain the same.

AUTH: 46-23-218, MCA  
IMP: 46-23-301, 46-23-307, MCA

REASON: The proposed amendment pertains to internal operating processes of the board and is ministerial in nature.

5. The board proposes to repeal the following rules:

20.25.202 DEFINITIONS

AUTH: 46-23-218, MCA  
IMP: 46-23-103, 46-23-104, 46-23-218, MCA

REASON: ARM 20.25.202 is proposed to be repealed because, contrary to 2-4-305, MCA, it unnecessarily repeats statutory definitions and the remaining terms defined in the rule have ordinary, everyday meanings that require no definitions.

20.25.505 CRITERIA FOR RELEASE GRANT DECISIONS ON  
NONMEDICAL PAROLE

AUTH: 46-23-218, MCA  
IMP: 46-23-201, 46-23-202, MCA

REASON: ARM 20.25.505 is proposed to be repealed because, contrary to 2-4-305, MCA, it unnecessarily repeats statutory language from 46-23-208, MCA.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Griffin Burns, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59601; telephone (406) 444-1551; or e-mail [griffin.burns@mt.gov](mailto:griffin.burns@mt.gov), and must be received no later than 5:00 p.m., March 11, 2022.

7. Lorraine Schneider, Department of Corrections, has been designated to preside over and conduct this hearing.

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

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been satisfied. The bill sponsor was contacted on January 26, 2022, by email.

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

/s/ Colleen E. Ambrose  
Colleen E. Ambrose  
Chief Legal Counsel  
Rule Reviewer

/s/ Steve Hurd  
Steve Hurd  
Chair  
Board of Pardons and Parole

Certified to the Secretary of State February 1, 2022.

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

In the matter of the adoption of New     )  
Rules I through III pertaining to child-   )  
facing employee certification and        )  
supervisory training                        )

NOTICE OF PUBLIC HEARING ON  
PROPOSED ADOPTION

TO: All Concerned Persons

1. On March 3, 2022, 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 adoption of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/81558356409>; meeting ID: 815 5835 6409; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 815 5835 6409. Find your local number: <https://mt-gov.zoom.us/j/81558356409>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on February 18, 2022, to advise us of the nature of the accommodation that you need. Please contact Valerie St. Clair, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-6863; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

NEW RULE I CHILD PROTECTION SPECIALIST CERTIFICATION (1) All Child and Family Services Division employees who are employed in child-facing employment positions, including child protection specialist supervisors and child protection specialists, must maintain certification.

(2) All division employees in child-facing positions hired after October 1, 2021 must successfully complete the training requirements for initial certification in their first year of employment.

(3) Following the completion of the mandatory training requirements, the division employee in a child-facing position must obtain a passing score on a competency examination approved by the division administration. An overall score of 80% is required for passage of the competency examination.

(a) Any division employee in a child-facing position who does not obtain a passing score as outlined above, must meet with their direct supervisor and regional training staff to review all relevant materials prior to attempting the competency examination again.

(b) Any division employee in a child-facing position who does not obtain a passing score on the competency examination following a second attempt must meet with the regional administrator and the division training development supervisor to review all relevant materials prior to attempting the competency examination again.

(c) Following the third unsuccessful attempt to obtain a passing score on the competency examination, the progressive discipline process through the department's human resources office will be utilized.

(d) If an employee hired after October 1, 2021 resigns and returns to the division within one year, and prior to resignation had completed the required training, the employee may choose to take the competency examination without repeating the training program.

(e) Current employees who were hired prior to October 1, 2021 who have completed training within the first year of hire are not required to repeat the training.

(i) Current employees must complete and pass the competency examination by October 1, 2023.

(ii) If the employee does not pass the competency examination within two attempts, the employee must repeat the training program prior to the third attempt.

(4) To be a child protection specialist supervisor, an employee must obtain the child protection specialist certification.

(5) Each division employee in a child-facing position who successfully completes the initial certification process must complete twenty hours of training on an annual basis.

(a) Annual training topics must include the topics required by statute.

(b) Other annual training topics approved by the division include, but are not limited to:

(i) parent coaching and supportive visitation;

(ii) childhood trauma;

(iii) multidisciplinary/child protection team;

(iv) substance use disorders;

(v) engagement and communication with children;

(vi) engagement and communication with adults;

(vii) forensic interview training;

(viii) identification and support of commercial sexual exploitation; and

(ix) any other trainings approved by division administration.

(c) Proof of successful completion of the required training hours must be provided to the division's training unit.

(6) For purposes of this rule, "division" means the Child and Family Services Division.

AUTH: 41-3-131, MCA

IMP: 41-3-127, 41-3-129, 41-3-130, MCA

NEW RULE II INITIAL CHILD PROTECTION SPECIALIST SUPERVISORY TRAINING (1) Child protection specialist supervisors are required to attend supervisory training. It is the responsibility of the division's training unit to develop, coordinate, implement, and track the completion of the initial supervisory training.

(2) All child protection specialist supervisors hired after July 1, 2021 must complete the initial supervisory training within the first year of employment as a child protection specialist supervisor.

(a) Training topics for child protection specialist supervisors include, but are not limited to:

- (i) personnel management and supervision framework;
- (ii) the division safety assessment model;
- (iii) the division practice model; and
- (iv) leadership in child welfare.

(3) Proof of successful completion of the required training hours must be provided to the division's training unit.

(4) For purposes of this rule, "division" means the Child and Family Services Division.

AUTH: 52-2-111, MCA

IMP: 52-2-111, MCA

NEW RULE III ANNUAL CHILD PROTECTION SPECIALIST SUPERVISORY TRAINING (1) Child protection specialist supervisors must complete annual child welfare supervisory training. It is the responsibility of the division's training unit to develop, coordinate, implement, and track the completion of these supervisory trainings on an annual basis.

(2) Child protection specialist supervisors must complete twenty hours of child welfare supervisory training annually and have the completion recorded and tracked by the division's training unit.

(3) Annual training topics for child protection specialist supervisors are based on topics relevant to the position.

(4) All supervisory trainings completed by child protection specialist supervisors must be approved by the division's administration. Proof of successful completion of supervisory trainings must be provided to the division's training unit.

(5) Twenty hours of child protection specialist supervisory training will count toward the twenty-hour child protection specialist recertification.

(6) For purposes of this rule, "division" means the Child and Family Services Division.

AUTH: 52-2-111, MCA

IMP: 52-2-111, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rules I through III pertaining to child-facing employee certification and supervisory training.

House Bill (HB) 459, passed by the 2021 Montana Legislature, codified as 41-3-127, 41-3-128, 41-3-129, and 41-3-130, MCA, requires all employees in child-facing positions within the division to successfully complete certification requirements,

consisting of certain child protection coursework (including topics identified in 41-3-128(2)(a), MCA) and successful completion of a competency examination, and, thereafter, complete annual training, including specific areas of training as required by 41-3-128 and 41-3-129, MCA. Sections 41-3-128 and 41-3-129, MCA specifically require that the child protection specialist certification coursework and process for annual renewal of the certification be specified by the department by rule.

House Bill (HB) 416, passed by the 2021 Montana Legislature, amended 52-2-111, MCA to require employees in certain supervisory positions, identified as district supervisors or supervisors of field staff, within the Child and Family Services Division (division) to complete annual child welfare supervisory training. HB 416 does not explicitly state that the training requirements must be written into rule. However, to maintain consistency with the new training and certification requirements and to further the division's mission, the department elects to include all child protection specialist and child protection specialist supervisor certification and training requirements into rule.

The department proposes adding these rules to facilitate the statutorily required trainings.

The department proposes to add New Rule I to facilitate the certification requirements for a child protection specialist as required by 41-3-127, 41-3-128, 41-3-129, and 41-3-130, MCA.

The department proposes to add New Rule II to facilitate the requirement that district supervisors, or supervisors of field staff, must complete annual child welfare supervisory training. The department elects to add these requirements to rule as stated above.

The department proposes to add New Rule III to combine the requirements of New Rule I and New Rule II for child protection specialist supervisors. Because the department proposes that child protection specialist supervisors would also be certified child protection specialists, child protection specialist supervisors would be subject to both the annual child protection specialist recertification training requirements and the annual child welfare supervisory training requirements. To minimize the training burden on such supervisors, the department proposes that the supervisor's annual child welfare supervisory training would count toward the supervisor's annual child protection specialist recertification training requirement. The child protection specialist supervisor training will differ from child protection specialist training in that it will contain child welfare topics and supervisory training.

#### Fiscal Impact

There is no anticipated fiscal impact associated with this rulemaking under 2-4-111 or 2-4-302(1)(c), MCA.

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: Valerie St. Clair, 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., March 11, 2022.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on January 6, 2022.

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

/s/ Ashley D. Morigeau  
Ashley D. Morigeau  
Rule Reviewer

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

Certified to the Secretary of State February 1, 2022.

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 37.93.101 pertaining to child- ) PROPOSED AMENDMENT  
placing agency definitions )

TO: All Concerned Persons

1. On March 3, 2022, at 9:00 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 rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/82003773231>; meeting ID: 820 0377 3231; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 820 0377 3231. Find your local number: <https://mt-gov.zoom.us/j/82003773231>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on February 18, 2022, to advise us of the nature of the accommodation that you need. Please contact Valerie St. Clair, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-6863; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

37.93.101 CHILD-PLACING AGENCY: DEFINITIONS ~~(1)~~ (4) "Child-placing agency" (agency) means any corporation, partnership, association, firm, agency, institution, or person, other than an attorney or health care provider acting under 52-8-103(2), MCA, who places or who arranges for the placement of any child with any family, person, or facility not related by blood or marriage, either for foster care or for adoption.

(a) remains the same.

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

(3) remains the same.

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

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

AUTH: 53-4-111, 53-4-403, MCA

IMP: 53-4-113, 53-4-403, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.93.101 pertaining to child-placing agency definitions. The department is proposing to amend the rule to update the definition of one of the terms commonly used within the child-placing agency administrative rules under ARM Title 37, chapter 93. The department also proposes renumbering the definitions to place them in alphabetical order.

The proposed amendment to ARM 37.93.101 amends the definition of "child-placing agency" by adding the words "other than an attorney or health care provider acting under 52-8-103(2), MCA" which provides an exception to the term, and makes the definition consistent with the updated language in 42-7-105 and 52-8-103, MCA from House Bill 502 in the 2021 Legislative Session. Section 42-7-105 provides for penalties for certain adoption placement actions, applicable to any person, except for the department, an attorney, or health care provider acting under 52-8-103(2), MCA or a licensed child-placing agency.

Similarly, under 52-8-103(1), MCA, and subject to an exception in 52-8-103(2), MCA, only an entity with a child-placing agency license may engage in certain adoption and foster care activities. Section 52-8-103(2), MCA, quoted below, permits attorneys and health care providers to assist with certain adoption activities without a child-placing agency license:

(a) An attorney and health care provider may assist a parent in identifying or locating a person interested in adopting the parent's child or in identifying or locating a child to be adopted, provided that the attorney or health care provider shall also provide an expectant parent and prospective adoptive parent with a list of agencies licensed to assist with adoption support services and counseling. No payment, charge, fee, reimbursement of expense, or exchange of value of any kind may be made to the attorney or health care provider assisting the parent. (b) An adoption in which an attorney or health care provider assists as allowed under subsection (2)(a) must comply with the provisions of Title 42 and this chapter.

Consistent with the 2021 changes in the statutes, the purpose of the amendment is to make it clear that attorneys and health care providers acting under 52-8-103(1)(d), MCA may engage in the identified activities without becoming a child-placing agency that is required to be licensed.

#### Fiscal Impact

There is no anticipated fiscal impact associated with this rulemaking under 2-4-111 or 2-4-302(1)(c), MCA.

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: Valerie St. Clair, 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., March 11, 2022.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on January 12, 2022.

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

/s/ Ashley D. Morigeau  
Ashley D. Morigeau  
Rule Reviewer

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

Certified to the Secretary of State February 1, 2022.

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

In the matter of the adoption of New     ) NOTICE OF PUBLIC HEARING ON  
Rule I pertaining to Montana Energy     ) PROPOSED ADOPTION  
Impact Assistance Financing             )

TO: All Concerned Persons

1. On March 7, 2022, at 1:30 p.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room, at 1701 Prospect Avenue, Helena, Montana, 59620-2601, to consider the proposed adoption of the above-stated rule. The department will accommodate remote participation via video conference. Commenters seeking to participate in the hearing by video conference must contact the department at 1-800-646-6150 by 5 p.m., March 4, 2022, to receive the necessary call-in information for the hearing. The hearing will be livestreamed at <http://psc.mt.gov/stream>.

2. The Department of Public Service Regulation 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, please contact the Department of Public Service Regulation no later than 5:00 p.m. on March 2, 2022, to advise us of the nature of the accommodation that you need. Please contact Tarin Slayton at the department by telephone at (406) 444-6170, by TDD/Montana Relay Service at 444-4212, or by e-mail at [tarin.slayton@mt.gov](mailto:tarin.slayton@mt.gov).

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

NEW RULE I MONTANA ENERGY IMPACT ASSISTANCE FINANCING

(1) If an electric utility applies to the commission to approve a financing order pursuant to the Montana Energy Impact Assistance Act, the electric utility's application to the commission must describe how such financing satisfies or follows from a plan developed pursuant to 69-3-1201 et seq., MCA, and any responsive commission comments.

(2) An application for a Montana Energy Impact Assistance Act financing order must be consistent with the relevant statutory requirements in 69-3-1601 through 69-3-1623, MCA, and include the following minimum filing requirements:

(a) testimony and workpapers providing an estimated schedule for the retirement or replacement of the electric infrastructure or facilities subject to the application;

(b) testimony and workpapers specifying the electric infrastructure or facilities to be retired or replaced, and the effects of the proposed financing on the retirement or replacement, including a description of the applicable electric infrastructure or facilities' contribution to the electric utility's rate base and the applicable reduction to rate base upon the inception of the collection of Montana energy impact assistance charges;

(c) testimony and workpapers describing the amount and terms of the proposed securitization, including the Montana energy impact assistance costs and financing costs associated with the retirement or replacement;

(d) testimony and workpapers describing the proposed methodology for allocating the revenue requirement for the Montana energy impact assistance charge among customer classes;

(e) testimony and workpapers describing the nonbypassable Montana energy impact assistance charge required to be paid by customers within the electric utility's service area for the recovery of the Montana energy impact assistance costs;

(f) testimony and workpapers estimating the net present value of electric utility customer savings expected to result if the financing order is issued using a net present value comparison between the costs to customers that are expected to result from the financing of the undepreciated balances of electric infrastructure or facilities with Montana energy impact assistance bonds and the costs that would result from the application of traditional electric utility financing mechanisms to the same undepreciated balances;

(g) testimony and workpapers demonstrating one or more alternative financing scenarios in addition to the preferred scenario contained in the application. The alternative scenarios shall include various bond lengths with sensitivity analyses of associated interest rates, and compare electric utility customer savings under each scenario;

(h) testimony and workpapers describing the proposed billing mechanism to collect the Montana energy impact assistance charges from the electric utility customers, including proposed tariff sheets;

(i) a copy of the proposed Montana energy impact assistance bonds;

(j) testimony and workpapers describing the proposed true up mechanism to adjust for any over/undercollections of Montana energy impact assistance charges;

(k) testimony and workpapers describing the proposed method to remove the applicable electric infrastructure or facilities from the electric utility's rate base upon the inception of the collection of Montana energy impact assistance charges; and

(l) if approval for the use of any remaining Montana energy impact assistance bond proceeds is not requested in the application, testimony providing a general description and timeframe of the electric utility's anticipated use of such proceeds in compliance with 69-3-1623, MCA.

(3) The commission may assess a penalty for violations of 69-3-1616, MCA. A penalty must be reasonable based on the facts and circumstances presented for each violation, including the amount in controversy, and be sufficient to deter future noncompliance. Penalty amounts must be determined after providing parties an opportunity to appear and be heard. Penalties must be in amounts authorized by 69-3-206(1), MCA, and recovered from electric utilities under the procedure required by 69-3-206(2), MCA.

AUTH: 69-3-1604, MCA

IMP: 69-3-1604, MCA

STATEMENT OF REASONABLE NECESSITY: The Public Service Commission (commission) proposes the rule to implement the Montana Energy Impact

Assistance Act, which provides an alternative financing mechanism to address the retirement and replacement of electric infrastructure or facilities and to authorize the commission to review and approve one or more financing orders, if it deems approval appropriate and in the interest of ratepayers.

The commission proposes (1) to align Montana energy impact assistance financing with least-cost planning requirements to ensure financing orders are consistent with just and reasonable rates and prudent utility resource planning decisions.

The commission proposes (2) to align minimum filing requirements with those required by statute (69-3-1601 through 69-3-1623, MCA).

The commission proposes (3) to establish general guidelines, penalty amounts, and a procedure for the commission to determine and assess the administrative penalty provided in 69-3-1604, MCA. This proposal refers to 69-3-206, MCA, which provides penalty amounts and provides a statutory procedure for recovering those penalties.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Tarin Slayton, Department of Public Service Regulation, 1701 Prospect Ave, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD/Montana Relay Service 444-4212; or e-mail [tarin.slayton@mt.gov](mailto:tarin.slayton@mt.gov), and must be received no later than 5:00 p.m., March 14, 2022.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

6. The commission, a commissioner, or a duly authorized presiding officer may conduct the 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 4 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Denise Hayman, was contacted by the department by e-mail and phone, and has provided comment on the proposed rulemaking.

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

/s/ Lucas Hamilton  
Lucas Hamilton  
Rule Reviewer

/s/ James Brown  
James Brown  
Chair  
Public Service Commission

Certified to the Secretary of State February 1, 2022.

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

In the matter of the repeal of ARM        )  
38.5.8301 and 38.5.8302 pertaining        )  
to Montana's Renewable Energy            )  
Resource Standard                            )

NOTICE OF PUBLIC HEARING ON  
PROPOSED REPEAL

TO: All Concerned Persons

1. On March 7, 2022, at 10:00 a.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room, at 1701 Prospect Avenue, Helena, Montana, 59620-2601, to consider the proposed repeal of the above-stated rules. The Department will accommodate remote participation via video conference. Commenters seeking to participate in the hearing by video conference must contact the Department at 1-800-646-6150 by 5 p.m., March 4, 2022, to receive the necessary call-in information for the hearing. The hearing will be livestreamed at <http://psc.mt.gov/stream>.

2. The Department of Public Service Regulation 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, please contact the Department of Public Service Regulation no later than 5:00 p.m. on March 2, 2022, to advise us of the nature of the accommodation that you need. Please contact Tarin Slayton at the department by telephone at (406) 444-6170, by TDD/Montana Relay Service at 444-4212, or by e-mail at [tarin.slayton@mt.gov](mailto:tarin.slayton@mt.gov).

3. The department proposes to repeal the following rules:

38.5.8301 RENEWABLE ENERGY RESOURCE STANDARD – PUBLIC UTILITIES

AUTH: 69-3-103, 69-3-2006, 69-8-1006, MCA

IMP: 69-3-2003, 69-3-2004, 69-3-2005, 69-3-2006, 69-8-1004, 69-8-1005, 69-8-1006, 69-8-1007, MCA

38.5.8302 RENEWABLE ENERGY STANDARD -- ELECTRICITY SUPPLIERS

AUTH: 69-3-103, 69-3-2006, MCA

IMP: 69-3-2003, 69-3-2004, 69-3-2005, 69-3-2006, MCA

REASON: These regulations lack statutory authority after the passage of HB 576—"An Act Repealing the Montana Renewable Power Production and Renewable Economic Development Act"—by the 2021 Montana Legislature.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Tarin Slayton, Department of Public Service Regulation, 1701 Prospect Ave, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD/Montana Relay Service 444-4212; or e-mail [tarin.slayton@mt.gov](mailto:tarin.slayton@mt.gov), and must be received no later than 5:00 p.m., March 14, 2022.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

6. The commission, a commissioner, or a duly appointed presiding officer may conduct the 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 4 above or may be made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Jerry Schillinger, was contacted by the commission by phone and e-mail, and invited to comment on the proposed rulemaking.

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

/s/ Lucas Hamilton  
Lucas Hamilton  
Rule Reviewer

/s/ James Brown  
James Brown  
Chair  
Public Service Commission

Certified to the Secretary of State February 1, 2022.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
42.39.307 pertaining to former	)	
DPHHS regulations for failed	)	NO PUBLIC HEARING
laboratory test samples	)	CONTEMPLATED

TO: All Concerned Persons

1. The Department of Revenue (department) proposes to repeal the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on February 18, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or [todd.olson@mt.gov](mailto:todd.olson@mt.gov).

3. The department proposes to repeal the following rule:

42.39.307 FAILED TEST SAMPLES

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, 50-46-326, MCA;

REASONABLE NECESSITY. ARM 39.107.410 was transferred to the department from the Department of Public Health and Human Services (DPHHS) and renumbered as ARM 42.39.307, effective July 2, 2021. The rule transfer was made in connection with the department's implementation of House Bill 701 (2021). The department proposes to repeal the above-stated rule because it is no longer necessary since DPHHS has statutory authority of the subject matter and it adopted or amended replacement rules under MAR Notice No. 37-967, generally effective January 14, 2022.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action, in writing, to Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [todd.olson@mt.gov](mailto:todd.olson@mt.gov) and must be received no later than March 11, 2022.

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 named in #4 no later than 5:00 p.m., March 11, 2022.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The number of hearing requests necessary for the department to conduct a public hearing is one, because the number of testing laboratory licensees that this repeal affects is four.

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

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

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

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

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Brendan Beatty  
Brendan Beatty  
Director of Revenue

Certified to the Secretary of State February 1, 2022.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 44.11.403, 44.11.501,	)	AMENDMENT
44.11.608, and 44.11.702 pertaining	)	
to child-care expenses and	)	NO PUBLIC HEARING
campaigns	)	CONTEMPLATED

TO: All Concerned Persons

1. The Office of the Commissioner of Political Practices (COPP) proposes to amend the above-stated rules.

2. The COPP 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 office no later than 5:00 p.m. on March 4, 2022, to advise us of the nature of the accommodation that you need. Please contact Scott Cook, Office of the Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail [scCook3@mt.gov](mailto:scCook3@mt.gov).

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

44.11.403 IN-KIND CONTRIBUTION, REPORTING AND VALUATION

(1) through (5) remain the same.

(6) Unpaid childcare provided to a candidate by a member of a candidate's family or an individual known to the candidate does not constitute a contribution, and need not be reported by the candidate.

AUTH: 13-37-114, MCA

IMP: 13-37-208, 13-37-209, 13-37-211, 13-37-220, 13-37-229, MCA

REASON: The COPP is amending this rule to reflect House Bill 221, enacted by the 2021 Montana Legislature.

44.11.501 EXPENDITURE – DEFINITION (1) For the purposes of Title 13, chapters 35 and 37, MCA, and these rules, the term "expenditure" as defined in 13-1-101, MCA, includes:

(a) through (f) remain the same.

(g) expenses incurred by a candidate while engaged in campaign activity for reasonable and necessary child-care expenses;

(g) and (h) remain the same but are renumbered (h) and (i).

(2) through (5) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-1-101, 13-37-220, 13-37-229, 13-37-232, MCA

REASON: The COPP is amending this rule to reflect House Bill 221, enacted by the 2021 Montana Legislature.

44.11.608 PERSONAL USE OF CAMPAIGN FUNDS (1) through (3) remain the same.

(4) The prohibition of this rule is not applicable to:

(a) remains the same.

(b) expenses incurred by a candidate while engaged in campaign activity for reasonable and necessary child-care expenses;

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

(5) and (6) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-1-101, 13-37-220, 13-37-229, 13-37-232, MCA

REASON: The COPP is amending this rule to reflect House Bill 221, enacted by the 2021 Montana Legislature.

44.11.702 DISPOSAL OF SURPLUS CAMPAIGN FUNDS AND PROPERTY

(1) through (5) remain the same.

(6) A candidate or eligible elected official shall abide by the prohibitions on the use of surplus campaign funds specified in 13-37-240, and 13-37-402, MCA, ARM 44.11.703, the provisions of this rule, and the rules in this chapter.

(a) and (b) remain the same.

(c) A candidate may not use surplus funds for candidate child-care expenses.

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

(7) and (8) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-37-220, 13-37-240, 13-37-402, MCA

REASON: The COPP is amending this rule to reflect House Bill 221, enacted by the 2021 Montana Legislature.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Scott Cook, Office of the Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail [scCook3@mt.gov](mailto:scCook3@mt.gov), and must be received no later than 5:00 p.m., March 11, 2022.

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 Scott Cook at the above address no later than 5:00 p.m., March 11, 2022.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 137 persons based on the 1,369 candidates in the 2020 and 2021 election cycles.

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

8. For ARM 44.11.403, 44.11.501, 44.11.608, and 44.11.702, the bill sponsor contact requirements of 2-4-302, MCA, apply. Representative Buckley was contacted by telephone and email on January 25, 2022. On January 26, 2022, Representative Buckley responded that she had no comments on the amendments as proposed.

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

/s/ Jaime MacNaughton  
Jaime MacNaughton  
Rule Reviewer

/s/ Jeffrey Mangan  
Jeffrey Mangan  
Commissioner  
Office of the Commissioner of Political Practices

Certified to the Secretary of State February 1, 2022.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 2.59.310, 2.59.315, 2.59.705,	)	REPEAL
2.59.1201, 2.59.1515, 2.59.1701, and	)	
2.59.1707 pertaining to standardized	)	
forms and procedures of the NMLS for	)	
consumer loan licenses, escrow	)	
business licenses, sales finance	)	
company licenses, and deferred	)	
deposit lender licenses, consumer	)	
loan license surrender, definitions for	)	
mortgage licensees, and revocation,	)	
suspension, or surrender of mortgage	)	
licenses; and the repeal of 2.59.313,	)	
2.59.314, 2.59.316, 2.59.708,	)	
2.59.709, 2.59.710, 2.59.711,	)	
2.59.1204, 2.59.1205, 2.59.1206,	)	
2.59.1207, 2.59.1517, 2.59.1518,	)	
2.59.1519, 2.59.1520, and 2.59.1708	)	
pertaining to initial applications	)	
through NMLS for consumer loan	)	
licenses, escrow business licenses,	)	
sales finance company licenses, and	)	
deferred deposit lender licenses,	)	
consumer loan license amendments	)	
and fees, escrow business license	)	
amendments, license surrender, and	)	
fees, sales finance company license	)	
amendments, license surrender, and	)	
fees, and deferred deposit lender	)	
license amendments, license	)	
surrender, and fees, and table funding	)	
requiring licensure for mortgage	)	
licensees	)	

TO: All Concerned Persons

1. On December 23, 2021, the Department of Administration published MAR Notice No. 2-59-612 pertaining to the proposed amendment and repeal of the above-stated rules at page 1815 of the 2021 Montana Administrative Register, Issue Number 24.

2. No comments were received.

3. The department has amended ARM 2.59.310, 2.59.315, 2.59.705, 2.59.1201, 2.59.1515, 2.59.1701, and 2.59.1707 exactly as proposed.

4. The department has repealed ARM 2.59.313, 2.59.314, 2.59.316, 2.59.708, 2.59.709, 2.59.710, 2.59.711, 2.59.1204, 2.59.1205, 2.59.1206, 2.59.1207, 2.59.1517, 2.59.1518, 2.59.1519, 2.59.1520, and 2.59.1708 exactly as proposed.

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 February 1, 2022.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF ADOPTION AND  
Rules I through LI pertaining to mutual ) REPEAL  
savings and loan associations and the )  
repeal of ARM 2.59.201 pertaining to )  
savings and loan associations – real )  
estate and 2.59.202 pertaining to )  
examination and supervisory fees for )  
savings and loan associations )

TO: All Concerned Persons

1. On December 23, 2021, the Department of Administration published MAR Notice No. 2-59-615 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 1827 of the 2021 Montana Administrative Register, Issue Number 24.

2. The department has adopted the following rules as proposed:

NEW RULE II (2.59.2002)	NEW RULE III (2.59.2003)
NEW RULE IV (2.59.2004)	NEW RULE V (2.59.2005)
NEW RULE VI (2.59.2006)	NEW RULE VII (2.59.2009)
NEW RULE VIII (2.59.2010)	NEW RULE IX (2.59.2013)
NEW RULE X (2.59.2014)	NEW RULE XI (2.59.2017)
NEW RULE XII (2.59.2018)	NEW RULE XIII (2.59.2021)
NEW RULE XIV (2.59.2022)	NEW RULE XV (2.59.2023)
NEW RULE XXIV (2.59.2034)	NEW RULE XXV (2.59.2035)
NEW RULE XXVI (2.59.2036)	NEW RULE XXVII (2.59.2037)
NEW RULE XXVIII (2.59.2040)	NEW RULE XXIX (2.59.2041)
NEW RULE XXX (2.59.2042)	NEW RULE XXXI (2.59.2043)
NEW RULE XXXII (2.59.2044)	NEW RULE XXXIII (2.59.2045)
NEW RULE XXXIV (2.59.2046)	NEW RULE XXXV (2.59.2047)
NEW RULE XXXVI (2.59.2048)	NEW RULE XXXVII (2.59.2051)
NEW RULE XXXVIII (2.59.2052)	NEW RULE XXXIX (2.59.2053)
NEW RULE XL (2.59.2054)	NEW RULE XLI (2.59.2055)
NEW RULE XLII (2.59.2056)	NEW RULE XLIII (2.59.2057)
NEW RULE XLIV (2.59.2058)	NEW RULE XLV (2.59.2061)
NEW RULE XLVI (2.59.2062)	NEW RULE XLVII (2.59.2063)
NEW RULE XLVIII (2.59.2064)	NEW RULE XLIX (2.59.2065)
NEW RULE L (2.59.2066)	NEW RULE LI (2.59.2069)

3. The department has repealed ARM 2.59.201 and 2.59.202 as proposed.

4. The department has adopted the following rules with changes from the original proposal, new material underlined, deleted material interlined:

NEW RULE I (2.59.2001) APPLICATION PROCEDURE FOR A  
CERTIFICATE OF AUTHORIZATION FOR A STATE-CHARTERED MUTUAL  
ASSOCIATION

(1) One or more individual incorporators desiring to organize a mutual association shall file with the department, an application for a certificate of authorization for a state-chartered mutual association. The department adopts and incorporates by reference:

(a) the Interagency Charter and Federal Deposit Insurance Application dated ~~August 31, 2019~~ July 2021, as the form that shall be completed when applying for a certificate of authorization; and

(b) the Interagency Biographical and Financial Report dated ~~April 30, 2017~~ August 2021, for use by individuals in conjunction with the Interagency Charter and Federal Deposit Insurance Application. The application and biographical and financial report are available at the department's website at [banking.mt.gov](http://banking.mt.gov).

(2) through (5) remain as proposed.

AUTH: 32-2-801, MCA

IMP 32-2-801, MCA

NEW RULE XVI (2.59.2026) DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) through (7) remain as proposed.

AUTH: 32-2-701, 32-2-704, ~~32-2-828~~, 32-2-830, MCA

IMP: 32-2-701, 32-2-704, ~~32-2-828~~, 32-2-830, MCA

NEW RULE XVII (2.59.2027) APPLICATION PROCEDURE FOR  
APPROVAL TO ESTABLISH A NEW BRANCH (1) through (5) remain as proposed.

AUTH: 32-2-704, ~~32-2-828~~, MCA

IMP: 32-2-704, ~~32-2-828~~, MCA

NEW RULE XVIII (2.59.2028) REVIEW PROCEDURE FOR APPLICATIONS  
FOR APPROVAL TO ESTABLISH A NEW BRANCH (1) through (7) remain as proposed.

AUTH: 32-2-704, ~~32-2-828~~, MCA

IMP: 32-2-704, ~~32-2-828~~, MCA

NEW RULE XIX (2.59.2029) PROCEDURE FOLLOWING APPROVAL OF  
AN APPLICATION TO ESTABLISH A NEW BRANCH (1) and (2) remain as proposed.

AUTH: 32-2-704, ~~32-2-828~~, MCA

IMP: 32-2-704, ~~32-2-828~~, MCA

NEW RULE XX (2.59.2030) BRANCHES (1) through (5) remain as proposed.

AUTH: 32-2-701, 32-2-704, ~~32-2-828~~, MCA

IMP: 32-2-701, 32-2-704, 32-2-828, MCA

NEW RULE XXI (2.59.2031) MONTANA MUTUAL ASSOCIATIONS BRANCHING OUTSIDE MONTANA (1) remains as proposed.

AUTH: 32-2-701, 32-2-704, ~~32-2-828~~, MCA

IMP: 32-2-701, 32-2-704, 32-2-828, MCA

NEW RULE XXII (2.59.2032) MUTUAL ASSOCIATIONS ORGANIZED OUTSIDE OF MONTANA BRANCHING INTO MONTANA (1) remains as proposed.

AUTH: 32-2-701, 32-2-704, ~~32-2-828~~, MCA

IMP: 32-2-701, 32-2-704, 32-2-828, MCA

NEW RULE XXIII (2.59.2033) CLOSURE OR RELOCATION OF A BRANCH (1) through (3) remain as proposed.

AUTH: 32-2-701, 32-2-704, ~~32-2-828~~, MCA

IMP: 32-2-701, 32-2-704, 32-2-828, MCA

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

COMMENT #1: A comment was received in support of the rulemaking.

RESPONSE #1: The department appreciates the comment.

COMMENT #2: A comment was received stating there is a newer version of the Interagency Charter and Federal Deposit Insurance Application and Interagency Biographical and Financial Report.

RESPONSE #2: The department agrees and has updated the version date for each form as provided in NEW RULE I (2.59.2001).

COMMENT #3: A commenter indicated 32-2-828, MCA, did not provide rulemaking authority for New Rules XVI (2.59.2026), XVII (2.59.2027), XVIII (2.59.2028), XIX (2.59.2029), XX (2.59.2030), XXI (2.59.2031), XXII (2.59.2032), and XXIII (2.59.2033).

RESPONSE #3: The department agrees and has updated the authority citation for each rule accordingly.

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 February 1, 2022.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 2.59.112 pertaining to	)	REPEAL
investment policies and the repeal of	)	
ARM 2.59.131, 2.59.133, and 2.59.137	)	
pertaining to the report of declaration	)	
and payment of dividend – dividend	)	
approval request form, oaths of	)	
directors, and parity with national	)	
banks	)	

TO: All Concerned Persons

1. On December 23, 2021, the Department of Administration published MAR Notice No. 2-59-616 pertaining to the proposed amendment and repeal of the above-stated rules at page 1872 of the 2021 Montana Administrative Register, Issue Number 24.

2. No comments were received.

3. The department has amended ARM 2.59.112 exactly as proposed.

4. The department has repealed ARM 2.59.131, 2.59.133, and 2.59.137 exactly as proposed.

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 February 1, 2022.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.13.101 and 24.13.105, and	)	REPEAL
the repeal of ARM 24.13.109	)	
pertaining to the Montana HELP Act	)	
workforce development services	)	

TO: All Concerned Persons

1. On November 5, 2021, the Department of Labor and Industry (department) published MAR Notice No. 24-13-386 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1461 of the 2021 Montana Administrative Register, Issue Number 21.

2. The department held a public hearing in Helena on November 30, 2021, over the Zoom videoconference and telephonic platform at which one member of the public commented. Other comments were received during the public comment period.

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

COMMENT 1: A commenter spoke in favor of the rule changes.

RESPONSE 1: The department acknowledges the comment.

COMMENT 2: A commenter asked if the department will provide assessments of potential program participants.

RESPONSE 2: Contracted agencies will provide assessments of potential program participants. By doing their own assessments, contracted agencies can better identify suitability for program participation.

COMMENT 3: A commenter asked if a person is a program participant when they are completing an assessment, or whether they are a program participant once they are working to develop an approved employment goal.

RESPONSE 3: An individual becomes a program participant after they have completed the assessment and begun developing an approved employment goal pursuant to ARM 24.13.103(3).

COMMENT 4: A commenter stated that there is no definition of "high-wage" career field and stated that the requirement for a program participant's goals to be in a "high-wage and in-demand career field" is discriminatory.

RESPONSE 4: The department acknowledges the comment. The rules do not define "high wage" or "in-demand." Rather, the terms are defined by department policy. High wage includes wages significant enough to exceed eligibility for Medicaid expansion or provide an opportunity to enter a career pathway that offers advancement within the career cluster leading to self-sufficient wages after more education, training, and experience. In-demand includes career fields identified by the legislature or based on local economic factors. These definitions allow contracted agencies sufficient flexibility to assist program participants by offering opportunities which lead to self-sufficient wages in readily available occupations.

COMMENT 5: A commenter stated that the applicable statute encourages contracted agencies to emphasize "high-demand occupations," 39-12-103(2)(b), MCA. The commenter notes that the statute does not require career goals for program participants to be in a "high-wage and in-demand career field," as required by ARM 24.13.105.

RESPONSE 5: The department acknowledges the comment. As described above, the rule allows contracted agencies sufficient flexibility to identify "high-wage" and "in-demand" career fields for different locations and local economic factors.

COMMENT 6: A commenter stated that the amendments do not clarify the extent to which the department will continue to communicate with the Department of Public Health and Human Services (DPHHS) about the program.

RESPONSE 6: The department shall continue to coordinate with and report necessary information to DPHHS for program administration as required by the legislature in 39-12-103(5) and 39-12-107(1), MCA.

COMMENT 7: A commenter stated that "contracted agency" in ARM 24.13.101(1) is defined as "a private or for-profit entity," and this does not match the statutory language that states the department must contract with "one or more private nonprofit or for-profit entities," 39-12-103(2)(b), MCA.

RESPONSE 7: The comment is well taken. The definition of "contracted agency" should mirror the statute, and the rule is amended below.

4. Pursuant to 2-4-305(1)(b)(ii), MCA, the department acknowledges comments of the primary sponsor of Chapter 547, Laws of 2021 (House Bill 614). The sponsor commented that the department did not include the term "education" as a form of workforce development services, and the department did not specifically define "employment goals" for program participants. The department acknowledges the comments. Because the statute requires the department to allow flexibility in the scope of services provided to program participants under 39-12-107(2), MCA, the department shall not include a specific reference to "education" as a form of workforce training or a definition for "employment goals" in rule. Rather, the department shall address these concerns as a matter of department policy.

5. The department has amended ARM 24.13.101 with the following changes, new matter underlined:

24.13.101 DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) "Contracted agency" means a private nonprofit or for-profit entity that has entered into a written contract with the state to provide workforce development services pursuant to the HELP Act program.

(2) through (8) remain as proposed.

6. The department has amended ARM 24.13.105 as proposed.

7. The department has repealed ARM 24.13.109 as proposed.

/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 February 1, 2022.

BEFORE THE BOARD OF REALTY REGULATION  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT AND
24.210.401 fee schedule, 24.210.601	)	REPEAL
general license administration	)	
requirements, 24.210.604 supervising	)	
broker endorsement, 24.210.611	)	
application for license—salesperson and	)	
broker, 24.210.801 fee schedule,	)	
24.210.807 property management	)	
license transfer requirements,	)	
24.210.828 unprofessional conduct for	)	
property management licensees, and	)	
the repeal of 24.210.610	)	
predetermination for licensing	)	

TO: All Concerned Persons

1. On December 23, 2021, the Board of Realty Regulation (board) published MAR Notice No. 24-210-48 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1881 of the 2021 Montana Administrative Register, Issue No. 24.

2. On January 18, 2022, a public hearing was held on the proposed amendment and repeal of the above-stated rules via the videoconference and telephonic platform. No comments were received by the January 20, 2022 deadline.

3. The board has amended ARM 24.210.401, 24.210.601, 24.210.604, 24.210.611, 24.210.801, 24.210.807, and 24.210.828 exactly as proposed.

4. The board has repealed ARM 24.210.610 exactly as proposed.

BOARD OF REALTY REGULATION  
DAN WAGNER  
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 February 1, 2022.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On December 10, 2021, the Board of Milk Control published MAR Notice No. 32-21-325 pertaining to the proposed amendment of the above-stated rule at page 1730 of the 2021 Montana Administrative Register, Issue Number 23.
2. The board has amended the above-stated rule as proposed.
3. No comments or testimony were received.
4. This rule amendment is effective July 1, 2022.

BY: /s/ Ken Bryan  
Ken Bryan  
Chair  
Board of Milk Control

BY: /s/ Darcy Alm  
Darcy Alm  
Rule Reviewer

Certified to the Secretary of State February 1, 2022.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 32.24.512 reports and records, )  
32.24.513 computation of the quota )  
price and excess price to be paid to )  
pool producers for pool milk, and )  
32.24.514 procedures for pooling of )  
returns from pool milk )

TO: All Concerned Persons

1. On December 10, 2021, the Board of Milk Control published MAR Notice No. 32-21-326 pertaining to the proposed amendment of the above-stated rules at page 1733 of the 2021 Montana Administrative Register, Issue Number 23.

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

3. No comments or testimony were received.

4. These rule amendments are effective March 1, 2022.

BY: /s/ Ken Bryan  
Ken Bryan  
Chair  
Board of Milk Control

BY: /s/ Darcy Alm  
Darcy Alm  
Rule Reviewer

Certified to the Secretary of State February 1, 2022.

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

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 37.85.105 pertaining to                )  
updating the effective dates of            )  
Medicaid fee schedules                    )

TO: All Concerned Persons

1. On December 23, 2021, the Department of Public Health and Human Services published MAR Notice No. 37-972 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1887 of the 2021 Montana Administrative Register, Issue Number 24.

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

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

COMMENT #1: The department received a comment regarding the section of the statement of reasonable necessity relating to the dental fee schedule change. The commenter stated on page 1890 of MAR Notice No. 37-972, section (3)(d) addresses the Current Dental Terminology (CDT) 2021, instead of the 2022 CDT.

RESPONSE #1: The department agrees with the comment. The statement of reasonable necessity incorrectly references the 2021 CDT, and it should have stated 2022 CDT. This was an administrative error and does not impact the January 1, 2022 Dentist Fee Schedule changes.

4. The department intends to apply these rules retroactively to January 1, 2022. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

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

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

Certified to the Secretary of State February 1, 2022.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 38.5.2202 and 38.5.2302 )  
pertaining to pipeline safety )

TO: All Concerned Persons

1. On November 5, 2021, the Department of Public Service Regulation published MAR Notice No. 38-5-251 pertaining to the proposed amendment of the above-stated rules at page 1507 of the 2021 Montana Administrative Register, Issue Number 21.

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

3. No comments or testimony were received.

/s/ Lucas Hamilton  
Lucas Hamilton  
Rule Reviewer

/s/ James Brown  
James Brown  
Chair  
Montana Public Service Commission

Certified to the Secretary of State January 25, 2022.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 38.5.2102 pertaining to utility )  
electricity voltage )

TO: All Concerned Persons

1. On November 5, 2021, the Department of Public Service Regulation published MAR Notice No. 38-5-252 pertaining to the proposed amendment of the above-stated rule at page 1510 of the 2021 Montana Administrative Register, Issue Number 21.

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

3. No comments or testimony were received.

/s/ Lucas Hamilton  
Lucas Hamilton  
Rule Reviewer

/s/ James Brown  
James Brown  
Chair  
Montana Public Service Commission

Certified to the Secretary of State January 25, 2022.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 42.12.208 pertaining to )  
temporary operating authority for )  
alcoholic beverage license applicants )

TO: All Concerned Persons

1. On September 10, 2021, the Department of Revenue published MAR Notice No. 42-1037 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1132 of the 2021 Montana Administrative Register, Issue Number 17.

2. On October 4, 2021, a public hearing was held to consider the proposed amendment. No proponents were present, no proponent oral testimony was received, and the department received no written comments in support. The following opponent was present and provided oral testimony: Shauna Helfert, Gaming Industry Association of Montana (GIA). The following persons also provided written comments in opposition: John Iverson, Montana Tavern Association (MTA); Michael Lawlor, attorney, Lawlor & Co., PLLC; and Brad Griffin, Montana Restaurant Association (MRA).

3. The department has amended ARM 42.12.208 as proposed.

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

COMMENT 1: Ms. Helfert commented that the proposed amendments represent an impediment to small business, through processing or delays, when the licensee opts to change license types at the same location.

RESPONSE 1: Section 16-4-404(6), MCA, is clear in its conditions for the grant of temporary operating authority: the department may permit a qualified purchaser to operate the business to be transferred pending final approval if (1) there has not been a change in location and (2) the application for transfer has been filed with the department.

Based on the clear language of 16-4-404(6), MCA, license transactions like Ms. Helfert describes in Comment 1 should not include the grant of temporary operating authority because they are license-only transactions. There is no bona fide sale of a business and no qualified purchaser who is operating the business during the application process. Further, a licensee is entitled to operate under its existing alcoholic beverages license while the second license is going through the application and approval process. The department believes any potential

impediment or delay is not attributable to whether temporary operating authority was granted.

COMMENT 2: Similar to Comment 1, Ms. Helfert commented her belief that the review of the rule and this rulemaking came out of the Governor's Red Tape Relief Initiative and that the removal of ARM 42.12.208(1) would actually cause an increase of "red tape" for Montana's small businesses. Ms. Helfert provided other examples of licensing transactions which are variations of the type described in Comment 1.

RESPONSE 2: This rulemaking did not come out of the department's implementation of the Governor's Red Tape Relief Initiative. The department observed license transaction patterns and compliance issues involving the issuance of temporary operating authority under the conditions in current ARM 42.12.208(1), adopted under MAR Notice No. 42-2-921 (2014), which prompted a review of the rule and 16-4-404, MCA. The department concluded the 2014 amendments to ARM 42.12.208(1) allow the issuance of temporary operating authority in license transactions which exceed those authorized under 16-4-404(6), MCA, and are contrary to the then-proposed rule's statement of reasonable necessity, which sought to " . . . improve clarity regarding when a licensee may be issued temporary operating authority." The department cannot continue this contradictory application of department discretion and issue temporary operating authority on those grounds.

In response to license transaction variations similar to those in Comment 1, the department directs Ms. Helfert to the second paragraph of Response 1 and that the potential for procedural "red tape" to an applicant is not based on the issuance of temporary operating authority because that authority is granted at the discretion of the department and is not the end result of the licensing process.

As to Ms. Helfert's other claims of inequity between existing licensees and their license change transactions versus a (new) purchaser and who may be granted temporary operating authority, the department again responds that Ms. Helfert's complaints are not with the department's rules but with the licensing statutes. The department asserts that general statutory license transfer requirements and the temporary operating authority constraints of 16-4-404(6), MCA, are known and must be factored by an applicant when engaging in the licensing process. The proper forum for any expanded scope of temporary operating authority is the Montana Legislature.

COMMENT 3: Ms. Helfert commented that current ARM 42.12.208(1) has been in force for seven years, that prior department administration presumably followed proper procedure and Montana laws in the promulgation of MAR Notice No. 42-2-921, and that the department is making the temporary operating authority process more cumbersome, which is contradictory to the GIA's perception of the policy goals of the current executive administration. Ms. Helfert added that there is enough ambiguity in 16-4-404, MCA, to sustain ARM 42.12.208(1) provisions with no known problems and that GIA interprets 16-4-404(6), MCA, with an emphasis that temporary operating authority may be granted "to operate the business" where the department is interpreting the law in the narrowest of views.

Similarly to Ms. Helfert, Mr. Iverson commented that the MTA questions whether this rule change is necessary. The existing rules appear to have been in place since 2014, and the MTA is not aware of any issues that the current rules have created. This proposal appears to be a solution in search of a problem.

Mr. Griffin also commented as to the longevity of the existing provisions in ARM 42.12.208(1) and opined that the department has ample discretion, by statute, to allow a business to operate the business pending the final approval if there is no change in location.

Mr. Lawlor commented similarly and contends the expanded authority of the department to grant temporary operating authority is positive. Mr. Lawlor also invokes the name of Ms. Helfert, as the former administrator for the department's Alcoholic Beverage Control Division, for the 2014 rulemaking as being correct. Mr. Lawlor draws upon his 2014 comments to MAR Notice No. 42-2-921 which encouraged the adoption of the amendments as a logical extension of temporary operating authority even when the license issued to the purchaser is technically a new, "original" license.

RESPONSE 3: The department understands all commenters' concerns that the amendments represent a change in department practice that has been in place - formally - since 2014, but the department reasserts that ARM 42.12.208(1) is not in concert with its implementing citation. The basis for this rulemaking is not only correct, but is also justified in the department's statement of reasonable necessity and Responses 1 and 2.

As to Ms. Helfert's ambiguity comment and Mr. Griffin's opinion about department discretion, the department again responds that 16-4-404(6), MCA, is clear, but is narrow in scope. Administrative rules are not meant to utilize ambiguity or expand agency discretion from the statutory purpose established by the Montana Legislature. The department cannot ignore legal conflict between statute and its administrative rules even when the result of the conflict is, in the commenters' eyes, positive.

The department struggles to thoroughly answer Mr. Iverson's comments that the department's "solution is in search of a problem" because the comments express an opinion, lack substance, and do not refute the department's statement of reasonable necessity and legal basis for the rulemaking. The department reiterates that it has observed license transaction patterns and compliance issues involving the issuance of temporary operating authority under the conditions in current ARM 42.12.208(1) which prompted a review of the rule and 16-4-404, MCA, but this response is not the appropriate place to disclose the situations and facts with a necessary level of detail. The department is willing to discuss those compliance matters with the MTA and Mr. Iverson should they be interested.

Notwithstanding Mr. Lawlor's opinion of Ms. Helfert's administration of the rulemaking under MAR Notice No. 42-2-921 that resulted in the amendments to ARM 42.12.208(1), the "logical extension" of department authority may facially appear as appropriate and the results positive, but logical extension when it is not legally supported by the implementing statute for the rule is not the basis for sound regulatory development. And Mr. Lawlor's 2014 comments are not operative because the department did not endorse his belief and made no statement that it

was the intent of the rule to expand the availability of temporary operating authority beyond the plain language of the statute.

COMMENT 4: Mr. Lawlor comments that the department has suddenly changed its mind, which is statutorily unnecessary and procedurally improper; it is also detrimental to businesses.

RESPONSE 4: As a general response, the department directs Mr. Lawlor to Responses 1 through 3.

As to the department's "suddenness" of the decision, the department contends the action was not sudden in its determination or how it was implemented, which was described in Response 2. Further, the department continued temporary operating authority for the affected license applicants until their respective license applications were either approved or withdrawn. Beginning in August 2021, and in cases where the issuance of temporary operating authority did not meet the license transfer parameters of 16-4-404(6), MCA, the department declined the issuance of temporary operating authority based on the legal determination, this rulemaking, and in compliance with 16-4-404, MCA.

In response to Mr. Lawlor's comment about the department being required to wait for the "legally required MAPA process," the department's grant of temporary operating authority is discretionary and can be approved or disapproved by the department during any license application process based on a myriad of circumstances, the most fundamental of which is whether the applicant's business transaction and license application meet the clear language of 16-4-404(6), MCA, and ARM 42.12.208. As for this rulemaking, the department has processed this notice, the required public hearing and comment process, and the adoption of the rule as proposed all in substantial compliance with MAPA.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Brendan Beatty  
Brendan Beatty  
Director of Revenue

Certified to the Secretary of State February 1, 2022.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 42.14.101, 42.14.106,	)	REPEAL
42.14.113, 42.14.202, 42.14.203,	)	
42.14.205, 42.14.303, 42.14.1002,	)	
42.14.1003, 42.14.1102, 42.14.1105,	)	
42.14.1201, 42.14.1202 and the	)	
repeal of ARM 42.14.206, 42.14.207,	)	
42.14.302, 42.14.304, 42.14.1001,	)	
42.14.1101 pertaining to lodging	)	
facility sales and use taxes and rental	)	
vehicle sales and use taxes	)	

TO: All Concerned Persons

1. On November 19, 2021, the Department of Revenue (department) published MAR Notice No. 42-1043 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1653 of the 2021 Montana Administrative Register, Issue Number 22.

2. On December 13, 2021, the department held a public hearing to consider the proposed amendment and repeal. The following commenter appeared and provided oral testimony on the proposed rulemaking: Michael Green, attorney, Crowley Fleck, PLLP, on behalf of the Montana Lodging and Hospitality Association (MLHA). The department also received written comments, questions, and recommendations for additional amendments from Mr. Green and the MLHA.

3. The department has amended ARM 42.14.113, 42.14.203, 42.14.205, 42.14.303, 42.14.1002, 42.14.1003, 42.14.1102, 42.14.1105, 42.14.1201, and 42.14.1202 as proposed.

4. The department has repealed ARM 42.14.206, 42.14.207, 42.14.302, 42.14.304, 42.14.1001, and 42.14.1101 as proposed.

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

42.14.101 DEFINITIONS The following definitions apply to this subchapter:  
(1) through (4) remain as proposed.  
(5) "Online hosting platform sale" means any sale facilitated through an online hosting platform, as defined in 15-68-101, MCA.  
(5) through (8) remain as proposed but are renumbered (6) through (9).  
(10) "Sale" means sale as defined in 15-68-101, MCA. In the case of online hosting platform sales, a sale for purposes of tax collection obligations occurs at the

time the seller collects funds from the purchaser and does not include any transaction occurring between a seller and an online hosting platform.

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

AUTH: 15-1-201, 15-65-102, 15-68-801, MCA

IMP: 15-65-101, 15-68-101, MCA

42.14.106 REGISTRATION AND PERMIT (1) remains as proposed.

(2) A seller who is registering multiple accommodations locations and who has elected to file a combined lodging facility sales and use tax return may file one registration listing separately each accommodations location. The combined return can only include accommodations that are located:

(a) remains as proposed.

(b) within a recognized Convention and ~~Visitors~~ Visitors Bureau (CVB).

(3) through (9) remain as proposed.

AUTH: 15-65-102, 15-68-801, MCA

IMP: 15-65-114, 15-68-401, 15-68-402, MCA

42.14.202 COMBINED CHARGE FOR SERVICES; DEPARTMENT INSPECTION OF RECORDS (1) through (8) remain as proposed.

(9) Each seller shall maintain records necessary to document gross receipts for the lodging facility sales and use tax. A seller may be required to substantiate gross receipts reported for a particular quarter. For audit purposes, the seller may be required to ~~reconstruct~~ provide the department access to, or copies of, data which substantiates the reported gross receipts from the original lodging facility sales and use tax receipts.

(10) Such records shall include specific electronic or physical documentation of exempt charges, including but not limited to sales generated through online hosting platforms and short-term rental marketplace. Documentation for centrally billed federal exemptions shall include the first six digits on each credit card used to pay for the accommodations. Documentation for long-term exempt accommodations may include the folio or similar documentation.

(11) remains as proposed.

AUTH: 15-1-201, 15-65-102, 15-68-801, MCA

IMP: 2-18-501, 15-65-111, 15-65-113, 15-68-102, 15-68-502, MCA

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

COMMENT 1: The MLHA supports adoption of most of the rules proposed by the department but requests revisions to certain rules to fully address the impacts of Senate Bill 52 (2021) (SB 52).

RESPONSE 1: The department appreciates industry support in the undertaking of such a lengthy and substantial rules project that entails much more than the implementation of SB 52. The department also appreciates the MLHA's offering of revisions, some of which have been incorporated to the rules upon adoption, which are described in these responses and indicated in the final version of the revised rules' text.

COMMENT 2: Mr. Green made comments at the December 13, 2021 public hearing that the MLHA believes that notwithstanding Comment 1, there has been a lack of stakeholder engagement with the MLHA to discuss the department's implementation of SB 52 prior to the filing of the department's proposal rules notice which could have resolved some of the MLHA's issues with the department's proposals.

RESPONSE 2: Mr. Green's comments do not present a complete recollection about stakeholder engagement in this rulemaking. Department representatives had several telephone calls with Mr. Green and with Stuart Doggett, executive director of the MLHA, regarding the department's implementation of SB 52; and department representatives also met with the MLHA's representatives on or about October 20, 2021, to discuss the direction and general substance of the department's rule proposals that became MAR Notice No. 42-1043.

Further, the Montana Administrative Procedure Act (MAPA) affords all interested persons, including industry stakeholders, the opportunity to attend rules hearings and/or to submit data, testimony, or comments to the department for its consideration and response before the conclusion of the comment deadline and within a statutory schedule. In most instances, the department believes the MAPA process works well and is sufficient without engaging in quasi-negotiated rulemaking with only a select number of stakeholders.

COMMENT 3: The MLHA requests the department clarify the single sales approach for online platform sales which the MLHA refers to as the "single seller model." While the MLHA disagrees with the department that this approach is required by SB 52, the MLHA is supportive of the prospective application of a single seller approach.

The MLHA believes clarifications should be incorporated into the rules regarding tax collection, reporting, and payment obligations under different online sales models. The MLHA offers that it is important to clarify that the lodging taxes are imposed on the "retail sale," which is the transaction with the end user, and not the transaction between the lodging provider and the online platform. Additionally, the MLHA contends that the collection responsibility should fall to the business which is actually collecting the sales price from the end user.

The MLHA requests the department add provisions to the definitions in ARM 42.14.101 to clarify that there is a single seller for each transaction and that the seller is the entity which is collecting funds from the purchaser. The MLHA also requests the department adopt language in ARM 42.14.303 to clarify that transactions occurring between lodging providers and online platforms are exempt from tax.

RESPONSE 3: Based on SB 52 and the legislature's clear definition of seller, the department has amended ARM 42.14.101 to add the definitions of "online hosting platform sale" and "sale" which the department believes adds clarity to instances when multiple parties are involved in a transaction; however, there is one seller in each transaction required to collect and remit the taxes.

COMMENT 4: The MLHA asks the department to recognize that the express intent of SB 52 was to resolve the split-tax collection issues created by the *Priceline* decision by aligning the tax base in statute for both lodging taxes. The MLHA contends the tax base adopted by SB 52 is intended to capture the types of online platform revenues addressed in *Priceline*, but exclude the resort services fees addressed in *Boyne USA v. DOR*. The MLHA requests the department clarify in ARM 42.14.202 that fees like the resort services fees at issue in *Boyne* are not included in the definition of sales price.

RESPONSE 4: As to the first portion of the comment, the MLHA requests the department to render a legal conclusion which the department contends is unnecessary. The court's *Priceline* and *Boyne* decisions speak for themselves and the department has noted those rules that are proposed for amendment or repeal based on the litigation. It is also not for the department to opine on the legislative intent of SB 52 because the language of the bill is unambiguous and legislative intent is necessary only in those instances where statutory language is ambiguous. The department contends that it is attempting to implement the will of the legislature in the rules package based on the department's review of the plain language in SB 52.

Regarding the MLHA's request to amend ARM 42.14.202, the department is disinclined to adopt rules which are contradictory to the clear language of the statutes.

COMMENT 5: Mr. Green commented that the MLHA is supportive of the amendment to proposed ARM 42.14.202(8) to add cleaning charges, but the MLHA is also concerned that the addition of charges in the subsection may introduce a further expansion of taxable services under the statute.

RESPONSE 5: The department responds that ARM 42.14.202(8) addresses the practice of separately stating charges for miscellaneous services which reduces the tax base. If a charge, such as a cleaning charge, must be paid as part of the sales price, the separately stated charge must be included in the sales price when calculating the tax. This rule provides further guidance to the legislature's adoption of the language in 15-68-101(12)(d), MCA. The department is not seeking to expand taxable services with the amendment to ARM 42.14.202(8).

COMMENT 6: The MLHA requests the department to clarify that recordkeeping requirements do not require businesses to maintain records in a format different than records are kept in the normal course of business. The MLHA's members are concerned that language regarding "original" receipts and "specific

documentation" could require businesses to maintain paper records for transactions which are tracked through the business's electronic business records.

RESPONSE 6: Based on the comments and suggestions provided, the department has amended ARM 42.14.202(9) and (10), upon adoption, to clarify some flexibility in the form of the records subject to audit and to lessen industry concerns.

/s/ Todd Olson

Todd Olson  
Rule Reviewer

/s/ Brendan Beatty

Brendan Beatty  
Director of Revenue

Certified to the Secretary of State February 1, 2022.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

In the matter of the amendment of            ) NOTICE OF AMENDMENT  
ARM 44.11.224, 44.11.226,                    )  
44.11.227, 44.11.406, 44.11.409,            )  
44.11.502, and 44.11.603 pertaining        )  
to campaign finance laws                    )

TO: All Concerned Persons

1. On December 10, 2021, the Commissioner of Political Practices (COPP) published MAR Notice No. 44-2-253 pertaining to the proposed amendment of the above-stated rules at page 1763 of the 2021 Montana Administrative Register, Issue Number 23. On December 23, 2021, the COPP published a second notice pertaining to the proposed amendment of the above-stated rules at page 1893 of the 2021 Montana Administrative Register, Issue Number 24.

2. The COPP has amended the following rules as proposed: ARM 44.11.406, 44.11.502, and 44.11.603.

3. The COPP has amended the following rules as proposed, but with the following changes from the original proposal, stricken matter interlined, new matter underlined:

44.11.224 DESIGNATION OF CONTRIBUTIONS FOR PRIMARY AND GENERAL ELECTIONS (1) through (4) remain as proposed.

AUTH: 13-37-114, MCA

IMP: 13-37-205, 13-37-216, ~~13-37-218~~, MCA

44.11.226 LIMITS ON RECEIPTS FROM POLITICAL COMMITTEES  
(1) remains as proposed.

AUTH: 13-37-114, 13-37-218, MCA

IMP: 13-37-114, 13-37-216, ~~13-37-218~~, MCA

44.11.227 LIMITATIONS ON INDIVIDUAL AND POLITICAL PARTY CONTRIBUTIONS TO A CANDIDATE (1) through (4) remain as proposed.

AUTH: 13-37-114, MCA

IMP: 13-37-216, ~~13-37-218~~, MCA

44.11.409 MONETARY DEPOSITS AND EXPENDITURES, ONLY THROUGH DEPOSITORY (1) through (5) remain as proposed.

AUTH: 13-37-114, MCA

IMP: 13-37-111, 13-37-205, 13-37-207, 13-37-208, 13-37-209, ~~13-37-215~~, 13-37-226, 13-37-229, 13-37-231, 13-37-232, MCA

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

COMMENT 1: Legislative staff for the COPP's interim committee, State Administration and Veterans' Affairs, provided comment regarding the proper implementing statutes for certain proposed rules.

RESPONSE 1: The COPP adopts the comments regarding proper implementing statutes as outlined above.

COMMENT 2: Legislative staff for the COPP's interim committee, State Administration and Veterans' Affairs, provided style comments on referring to legislation as chapter numbers in the MCA instead of legislative bill numbers.

RESPONSE 2: The COPP disagrees with these style comments, as the purpose is to provide public notice of the legislation being implemented. The public generally refers to legislative bill numbers rather than to chapter number in the MCA, so use of the bill number provides more comprehensive public notice.

/s/ Jaime MacNaughton  
Jaime MacNaughton  
Rule Reviewer

/s/ Jeffrey Mangan  
Jeffrey Mangan  
Commissioner  
Office of the Commissioner of Political Practices

Certified to the Secretary of State January 28, 2022.

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

## RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2021. This table includes notices in which those rules adopted during the period August 27, 2021, through January 28, 2022, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2021, 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 2021 or 2022 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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