

# MONTANA ADMINISTRATIVE REGISTER

2018 ISSUE NO. 13  
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PAGES 1209-1321



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 13

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PROPOSED
Rule I pertaining to commencement	)	ADOPTION
of guaranteed annual benefit	)	
adjustment	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On August 25, 2018, the Public Employees' Retirement Board proposes to adopt the above-stated rule.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Montana Public Employee Retirement Administration no later than 5:00 p.m. on July 27, 2018, to advise us of the nature of the accommodation that you need. Please contact Kris Vladoic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail [kvladoic@mt.gov](mailto:kvladoic@mt.gov).

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

**NEW RULE I COMMENCEMENT OF GUARANTEED ANNUAL BENEFIT ADJUSTMENT** (1) If otherwise eligible, a retired member of any retirement system will receive their first guaranteed annual benefit adjustment (GABA) in their January benefit if they have been receiving a monthly benefit in every month for at least 12 months. Except as provided in (2), commencement of the 12-month period starts the month in which the first benefit payment is made, not the month for which any part of the payment is due.

(2) In the event a member timely applies to begin retirement in January of any year, but through no fault of the member the January payment is not paid until a later month, the member will be eligible for GABA the January immediately following commencement of payment of the benefit.

(a) "Timely applies" is dependent upon individual circumstances, but in any event a fully completed application must be filed on or before the 10th of any month in order to be considered timely for receipt of a retirement benefit payment in that month.

(b) MPORS DROP applications must be filed pursuant to ARM 2.43.4609(4) in order to be considered "timely."

AUTH: 19-2-403, 19-3-1605, 19-5-901, 19-5-902, 19-6-710, 19-6-711, 19-6-712, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, 19-13-1011, MCA

IMP: 19-2-908, 19-3-1605, 19-5-901, 19-5-902, 19-6-710, 19-6-711, 19-6-712, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-9-1207, 19-13-1010, 19-13-1011, MCA

REASON: Administrative delay outside the control of the member can result in members who terminate service and apply for retirement starting January 1 of any year not receiving a retirement benefit payment in January. Rather, assuming they are eligible, the January and any subsequent monthly benefit payments may be paid in a later month. This rule is necessary to clarify that when the delay is not attributable to a member eligible to retire in January, the member will be eligible to receive a GABA the following January. If the delay is attributable to the member's delinquency, the 12-month time period will not commence until the month initial payment occurs. This is consistent with the legislature's stated intent when adopting Section 43, Ch. 370, L. 1997: "The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a 'retiree' during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date."

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail [mpera@mt.gov](mailto:mpera@mt.gov), and must be received no later than 5:00 p.m., August 3, 2018.

5. If persons who are directly affected by the proposed amendments 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 they have to Kris Vladic at the above address no later than 5:00 p.m., August 3, 2018.

6. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; 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 64 based on approximately 642 participants in the Defined Benefit Retirement Plan that have retired in calendar year 2018.

7. The Public Employee Retirement Administration 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 Montana Public Employee Retirement Administration.

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

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

/s/ Melanie A. Symons  
Melanie A. Symons  
Chief Legal Counsel  
and Rule Reviewer

/s/ Maggie Peterson  
Maggie Peterson  
Vice President  
Public Employees' Retirement Board

Certified to the Secretary of State June 26, 2018.



BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF EXTENSION OF
ARM 4.10.701, 4.10.807, 4.10.1004,	)	COMMENT PERIOD ON
and 4.10.1009, and repeal of ARM	)	PROPOSED AMENDMENT AND
4.10.702 and 4.10.709 pertaining to	)	REPEAL
pesticide registration regulations	)	

TO: All Concerned Persons

1. On April 27, 2018, the Department of Agriculture published MAR Notice No. 4-18-248 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 758 of the 2018 Montana Administrative Register, Issue Number 8.

2. A public hearing was held May 22, 2018. The Department of Agriculture is extending the comment period in order to accommodate additional internal review. Written comments must be received no later than 5:00 p.m., July 20, 2018.

3. The Department of Agriculture 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 Agriculture no later than 5:00 p.m. on July 13, 2018 to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, 302 N. Roberts, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov).

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov), and must be received no later than 5:00 p.m., July 20, 2018.

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Agriculture

Certified to the Secretary of State June 26, 2018.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF EXTENSION OF
Rules I and II and amendment of	)	COMMENT PERIOD ON
ARM 4.10.1803, 4.10.1804, and	)	PROPOSED ADOPTION AND
4.10.1806 pertaining to the pesticide	)	AMENDMENT
container recycling program and	)	
waste pesticide disposal program	)	

TO: All Concerned Persons

1. On April 27, 2018, the Department of Agriculture published MAR Notice No. 4-18-249 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 763 of the 2018 Montana Administrative Register, Issue Number 8.

2. A public hearing was held May 22, 2018. The Department of Agriculture is extending the comment period in order to accommodate additional internal review. Written comments must be received no later than 5:00 p.m., July 20, 2018.

3. The Department of Agriculture 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 Agriculture no later than 5:00 p.m. on July 13, 2018 to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, 302 N. Roberts, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov).

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov), and must be received no later than 5:00 p.m., July 20, 2018.

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Agriculture

Certified to the Secretary of State June 26, 2018.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption of New     ) NOTICE OF PUBLIC HEARING ON  
Rules I through IV pertaining to the     ) PROPOSED ADOPTION  
Analytical Laboratory fees             )

TO: All Concerned Persons

1. On July 31, 2018, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Agriculture 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 Department of Agriculture no later than 5:00 p.m. on July 27, 2018, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409, or e-mail agr@mt.gov.

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

NEW RULE I ANALYTICAL LAB FEE SCHEDULE (1) Fees for Water and  
Miscellaneous Samples:

- (a) Alkalinity.....\$50.00
- (b) Hardness.....\$50.00
- (c) Nitrate.....\$15.00
- (d) Nitrate/Nitrate as Nitrogen.....\$150.00
- (e) pH.....\$15.00
- (f) Sulfate.....\$50.00
- (g) Total Dissolved Solids (TDS) .....\$25.00
- (h) Calcium (Ca) .....\$40.00
- (i) Copper (Cu) .....\$40.00
- (j) Iron (Fe) .....\$40.00
- (k) Phosphorus (P) .....\$40.00
- (l) Potassium (K) .....\$40.00
- (m) Sodium (Na) .....\$40.00
- (n) Zinc (Zn) .....\$40.00
- (o) Elemental Screen.....\$150.00
- (2) Fees for Fertilizer Samples:
  - (a) Nitrogen, Total.....\$25.00
  - (b) P<sub>2</sub>O<sub>5</sub>, Available.....\$50.00
  - (c) K<sub>2</sub>O Soluble.....\$50.00
  - (d) Sulfur.....\$50.00
  - (e) Calcium (Ca) .....\$40.00
  - (f) Cobalt.....\$40.00

(g) Copper (Cu) .....	\$40.00
(h) Iron (Fe) .....	\$40.00
(i) Magnesium (Mg) .....	\$40.00
(j) Manganese (Mn) .....	\$40.00
(k) Molybdenum (Mo).....	\$40.00
(l) Sodium (Na).....	\$40.00
(m) Zinc (Zn) .....	\$40.00
(3) Fees for Secondary and Micro Nutrient Screening:	
(a) Arsenic (As).....	\$40.00
(b) Cadmium (Cd).....	\$40.00
(c) Cobalt (Co).....	\$40.00
(d) Lead (Pb).....	\$40.00
(e) Molybdenum (Mo).....	\$40.00
(f) Nickel (Ni) .....	\$40.00
(g) Selenium (Se) .....	\$40.00
(h) Zinc (Zn) .....	\$40.00
(i) Metals Screen.....	\$150.00
(4) Fees for Feed/Forage Samples:	
(a) Acid Detergent Fiber (ADF).....	\$25.00
(b) Ash.....	\$15.00
(c) Crude Fat.....	\$20.00
(d) Crude Fat for Baked/Expanded.....	\$20.00
(e) Crude Fiber.....	\$25.00
(f) Crude Protein.....	\$20.00
(g) Moisture.....	\$10.00
(h) Neutral Detergent Fiber (NDF).....	\$25.00
(i) Nitrate.....	\$20.00
(j) Non-Protein Nitrogen (Urea).....	\$35.00
(k) Relative Feed Value.....	\$50.00
(l) Salt.....	\$35.00
(m) TDN from ADF.....	\$30.00
(n) TDN by Proximate Analysis.....	\$60.00
(o) Label Claim.....	\$50.00
(p) Calcium (Ca).....	\$40.00
(q) Copper (Cu).....	\$40.00
(r) Iron (Fe).....	\$40.00
(s) Magnesium (Mg).....	\$40.00
(t) Manganese (Mn).....	\$40.00
(u) Phosphorus (P).....	\$40.00
(v) Potassium (K) .....	\$40.00
(w) Selenium.....	\$50.00
(x) Sodium (Na) .....	\$40.00
(y) Zinc (Zn) .....	\$40.00
(z) Elemental Screen.....	\$150.00
(aa) Amprolium.....	\$200.00
(ab) Chlortetracycline.....	\$200.00
(ac) Decoquinat.....	\$200.00

- (ad) Lasalocid.....\$200.00
- (ae) Lysine/Methionine.....\$150.00
- (af) Monensin.....\$100.00
- (ag) Oxytetracycline.....\$200.00
- (ah) Sulfamethazine.....\$200.00
- (ai) Vitamin A.....\$200.00

AUTH: 80-1-104, MCA  
IMP: 80-1-104, MCA

REASON: The Analytical Lab was housed partially under the administrative auspices of Montana State University and therefore outside normal rule making. These fees for water and miscellaneous samples, fertilizer samples, secondary and micro nutrient screening, and feed/forage samples, are commensurate with the needs of the continued operation of the lab and represent the current fee structure.

NEW RULE II PESTICIDE SAMPLE FEES (1) The fee is based on the matrix and whether it is being tested for the presence of one chemical residue or multiple as illustrated below:

(a) Matrix	Individual	Multi-Residue
Water:	\$200.00	\$400.00
Soil:	\$250.00	\$300.00
Vegetation:	\$250.00	\$300.00

- (2) The lab may not be able to perform certain residue tests based on the quality of the sample, the availability of equipment, or the matrix/residue in question.
- (3) Custom testing requests are charged according to the amount of time and resources needed for the test.

AUTH: 80-1-104, MCA  
IMP: 80-1-104, MCA

REASON: The Analytical Lab was housed partially under the administrative auspices of Montana State University and therefore outside normal rule making. These pesticide sample fees are commensurate with the needs of the continued operation of the lab and represent the current fee structure.

NEW RULE III DISCOUNTS (1) To be eligible for a discount, samples must be submitted at the same time for the same test.

- (2) Discount by number of samples:
  - (a) 1-2.....No Discount
  - (b) 3-6.....10% Discount
  - (c) 7+.....20% Discount

AUTH: 80-1-104, MCA  
IMP: 80-1-104, MCA

REASON: The Analytical Lab was housed partially under the administrative auspices of Montana State University and therefore outside normal rule making. These discounts are commensurate with the needs of the continued operation of the lab and represent the current fee structure.

NEW RULE IV CONTRACT WORK (1) As time permits, the lab may take on contract work for other governmental or private entities to perform services needed and within the scope of the expertise of the lab. The lab will set fees for this based on negotiations.

AUTH: 80-1-104, MCA

IMP: 80-1-104, MCA

REASON: The Analytical Lab was housed partially under the administrative auspices of Montana State University and therefore outside normal rule making. These fees are commensurate with the needs of the continued operation of the lab and shall be negotiated on a case-by-case basis.

The cumulative annual increase in revenue, based on an average of the Analytical Lab revenue from the past 8 years, is \$7,430. The number of persons affected is estimated to be 2,500 based on the number of customers currently entered in the Analytical Lab database (2,835).

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: Cort Jensen, Department of Agriculture, 302 N. Roberts, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov), and must be received no later than 5:00 p.m., August 10, 2018.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

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

7. The bill sponsor contact requirements of 2-4-30, MCA, do not apply.

8. 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/ Cort Jensen

Cort Jensen  
Rule Reviewer

/s/ Ben Thomas

Ben Thomas  
Director  
Agriculture

Certified to the Secretary of State June 26, 2018.

BEFORE THE BOARD OF MILK CONTROL  
AND THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 32.24.480 producer pricing ) PROPOSED AMENDMENT  
rules )

TO: All Concerned Persons

1. On August 3, 2018, at 9:00 a.m., the Department of Livestock (department) will hold a public hearing in the conference room of the Department of Justice, Agency Legal Services, which is located at 1712 9th Avenue at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on July 27, 2018, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.24.480 PRODUCER PRICING RULES (1) The bureau will use the federal order advanced pricing factors to calculate the producer prices for all classes. Advanced federal order butterfat and skim milk prices are announced on or before the 23rd day of the month and apply to the milk received during the following month. Nothing contained in these rules prohibits the payment of higher prices to producers.

(2) The minimum Class I price per hundredweight at 3.5% butterfat which must be paid to producers by distributors in the state of Montana, is the monthly federal order price according to 7 CFR 1000.50(a) through (c) plus a Montana Class I location differential of \$2.55.

(a) When milk does not test 3.5% butterfat, the price per cwt will be adjusted for each 0.1% the butterfat test moves up or down.

~~(b) The bureau will use the federal order fat and skim prices to calculate the producer prices. Federal order fat and skim prices are announced on the Friday previous to the 23rd of each month unless the 23rd falls on a Friday. Montana will follow the same schedule.~~

(3) Prices paid producers for Class II milk will be based on the following price formulas for skim milk and butterfat. ~~the last spray process nonfat dry milk solids price per pound quote prior to the 20th of the month, Central States area, as most recently reported by the United States Department of Agriculture, plus a factor of~~



~~\$0.0125 per pound for freight, multiplied by 8.2 (which is the amount of solids not fat in skim milk), plus the last Chicago area grade AA butter price quote prior to the 20th of the month as most recently reported by the United States Department of Agriculture, less an adjustment factor of \$0.0895, multiplied by 4.2 (which is the amount of butter in pounds, which can be produced from 100 pounds of milk with 3.5% butterfat content), less a make allowance of 8.5%. In the case of milk containing more or less than 3.5% butterfat, the differential to be employed in computing prices will be the above-mentioned Chicago area butter price, less an adjustment factor of \$0.0895, multiplied by 0.111, rounded to nearest half cent (\$0.005).~~

(a) Class II Skim Milk Price Formula. The price of the skim milk utilized in Class II will be the Class II skim milk price published in the United States Department of Agriculture Announcement of Advanced Prices and Pricing Factors or its successor publication, converted to units of dollars per pound of skim milk.

(b) Class II Butterfat Price Formula. The price of butterfat utilized in Class II will be the Advanced Butterfat Pricing Factor published in the United States Department of Agriculture Announcement of Advanced Prices and Pricing Factors plus \$0.007 per pound of butterfat and in units of dollars per pound of butterfat.

~~(4) Prices paid to producers for Class III milk will be the last Chicago area grade AA butter price quote prior to the 20th of the month as most recently reported by the United States Department of Agriculture, less an adjustment factor of \$0.0895, less 10% and, in addition, when skim milk is utilized in this classification by any distributor, the last spray process nonfat milk solids price per pound quote prior to the 20th of the month, the Central States area, as most recently reported by the United States Department of Agriculture, plus a factor of \$0.0125 per pound for freight, multiplied by 8.2, less 17%. Prices paid producers for Class III milk will be based on the following price formulas for skim milk and butterfat.~~

(a) Class III Skim Milk Price Formula. The price of the skim milk utilized in Class III will be the lower of the Advanced Class III Skim Milk Pricing Factor or the Advanced Class IV Skim Milk Pricing Factor published in the United States Department of Agriculture Announcement of Advanced Prices and Pricing Factors or its successor publication, converted to units of dollars per pound of skim milk.

(b) Class III Butterfat Price Formula. The price of butterfat utilized in Class III will be the Advanced Butterfat Pricing Factor published in the United States Department of Agriculture Announcement of Advanced Prices and Pricing Factors or its successor publication less the Montana Class III Butterfat Price Differential and in units of dollars per pound of butterfat.

(i) Class III Montana Butterfat Price Differential. The Montana Class III Butterfat Price Differential is:

(A) \$0.20 per pound of butterfat for Class III butterfat utilized before January 1, 2019;

(B) \$0.15 per pound of butterfat for Class III butterfat utilized from January 1, 2019 through June 30, 2019;

(C) \$0.10 per pound of butterfat for Class III butterfat utilized after June 30, 2019.

(5) Minimum quota prices and minimum excess prices paid to pool producers are determined by the calculations provided for in ARM 32.24.513. The calculations

in ARM 32.24.513 include adjustments to the pool-wide utilization value for surplus sales and for transportation charges for shipments of unprocessed pool milk between pool plants.

(6) No price established by any formula set forth in this rule may be charged if contrary to any supervening federal or state law, rule, or regulation. Should any minimum prices published by this board under this rule exceed the limitations imposed by such laws, rules, or regulations, such prices must be reduced to the extent of such excess, even though such reduction may impair a uniform or complete application of the price fixing formula, or any of the same, set out in this rule. The prices, as so modified, must be respected and enforced as the minimum prices established under this rule.

(7) On or before the 23rd day of each month, the bureau will compute prices for Class I, II, and III milk to be paid to producers by pool handlers for milk received from producers during the next calendar month, in accordance with this pricing rule. By the 26th day of each month, the bureau will publish a notice of the Class I, II, and III prices to be paid to producers by pool handlers for milk received from producers during the next calendar month and distribute the notice to each pool producer and pool handler licensed under the Act. The notice must contain the mathematical computations used to calculate the prices. The minimum producer price will be uniform and identical throughout the state of Montana.

AUTH: 81-23-104, 81-23-302, MCA

IMP: 81-23-102, 81-23-302, MCA

REASON: The board proposes to amend the above-stated rule:

- to implement recommendations made in the Montana Milk Market Regulation Study Final Report submitted to the Board of Milk Control in June 2018 by Dairy Technomics LLC, including a recommendation for a transition period for changing the Class III butterfat price formula;
- to replace Class II and Class III price formulas with price formulas that have underlying structures that are the same as, or similar to, markets that regulate prices of a majority portion of milk produced in the United States;
- to address a characteristic of the current structure of the Class III butterfat price formula that causes the Montana Class III butterfat price to be substantially lower than Class III butterfat prices in most other regulated markets in the United States and for which the difference between the Montana Class III butterfat price and federal Class III butterfat price increases as national butter prices increase;
- to increase producer blend prices for raw milk to be more similar to prices received elsewhere in the United States;
- to provide for an advance price announcement of all Class II and Class III prices to allow distributors to know raw material costs in advance of processing and marketing raw and processed milk products;
- to maintain a negative Montana price differential for the Class III butterfat price to encourage expanded Class III processing in Montana;

- to provide a negative Montana price differential for Class III butterfat price to reduce Montana processors' risk of market volatility of having an advanced Class III butterfat price formula that is based on an earlier and shorter reference price data collection period than the United States Department of Agriculture (USDA) Butterfat Price announced in the USDA Announcement of Class and Component Prices, which sets the Class III and Class IV butterfat price for much of the United States milk market; and
- to correct and relocate text in (2)(b) that pertains to describing advanced pricing factors calculated and announced by the USDA for use in calculating certain advanced prices in federal order markets.

The proposed amendments would affect approximately 57 businesses licensed by the Milk Control Bureau.

Compared to the price formulas for Class II and Class III currently in use, the proposed price formulas would have collectively increased revenue to Montana producers in calendar years 2015 - 2017 by approximately 3.5% - 4.4%, dependent upon which proposed Montana Class III Butterfat Price Differential would have been in effect. In 2017, the proposed rules would have increased the overall blend value of all pool milk by \$0.68/cwt - \$0.84/cwt, depending upon the proposed Montana Class III Butterfat Price Differential. The proposed Class III butterfat price formula would have accounted for nearly all of the increase. The proposed amendments to the Class III price formulas would have increased producers' revenue by approximately 3.3% - 4.2%, dependent upon which proposed Montana Class III Butterfat Price Differential would have been in effect. The proposed amendments to the Class II price formulas would have increased producers' revenue by approximately 0.2%.

While Montana producers would realize an increase in revenue if the proposed price formulas were adopted, Montana distributors that operate pool plants would realize increased raw material costs. The approximate impact the proposed amendments would have had in 2015 - 2017 to distributors' costs compared to current rules for the skim and butterfat portions of Class II and Class III utilization values are as follows:

- Class III Butterfat. Dependent upon which proposed Montana Class III Butterfat Price Differential would have been in effect, the proposed amendments to the Class III price formulas would have increased distributors' costs for the butterfat portion of milk utilized in Class III by approximately 18.1% - 23.5% and would have increased the total Class III utilization cost by approximately 15.1% - 19.6%.
- Class III Skim Milk. The proposed amendments to the Class III price formulas would have decreased distributors' costs for the skim milk portion of milk utilized in Class III by approximately 1% and would have decreased the total Class III utilization cost by approximately 0.1%.
- Class II Butterfat. The proposed amendments to the Class II price formulas would have increased distributors' costs for the butterfat portion of milk

utilized in Class II by approximately 4% and would have increased the total Class II utilization cost by approximately 3%.

- Class II Skim Milk. The proposed amendments to the Class II price formulas would have increased distributors' costs for the skim milk portion of milk utilized in Class II by approximately 1% and would have increased the total Class II utilization cost by approximately 0.2%.

The board proposes to revise the Class II and Class III price formulas based upon facts within its own knowledge. These facts include the data collected by the Department of Livestock Milk Control Bureau; the data contained in the Montana Milk Market Regulation Study Final Report, authored by Dairy Technomics LLC; the data contained in the small business impact statement for this proposal; and data considered by the Board of Milk Control at its June 25, 2018 meeting. So that interested parties may have an opportunity to be heard and to question or rebut the facts as a matter of record, interested parties may request the bureau to provide electronic copies of this information by telephoning (406) 444-2875, by faxing at (406) 444-1432, or by emailing LIVMilkControl@mt.gov.

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority.

4. The department intends to adopt the proposed amendment effective September 19, 2018.

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 the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., August 3, 2018.

6. Rob Stutz, attorney for the department, has been designated to preside over and conduct this hearing.

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

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will significantly and directly impact small businesses.

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

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

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

Certified to the Secretary of State June 26, 2018.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.3.108 quarantine and	)	AMENDMENT AND REPEAL
release of quarantine, 32.3.201	)	
definitions, 32.3.206 official health	)	NO PUBLIC HEARING
certificate, 32.3.207 permits, 32.3.212	)	CONTEMPLATED
additional requirements for cattle,	)	
32.3.216 horses, mules, and asses,	)	
32.3.307 department ordered	)	
pseudorabies testing, 32.3.311	)	
procedure upon detection of	)	
pseudorabies, 32.3.407 department	)	
ordered brucellosis testing of animals,	)	
32.3.411 procedure upon detection of	)	
brucellosis, 32.3.412 memorandum of	)	
understanding, 32.3.433 designated	)	
surveillance area, 32.3.436	)	
vaccination within the counties in	)	
which the DSA is located, 32.3.1003	)	
contaminated premises, 32.4.101	)	
definitions, 32.4.202 identification of	)	
omnivores and carnivores, 32.4.601	)	
importation of alternative livestock,	)	
and repeal of ARM 32.3.224 domestic	)	
bison, 32.3.430 quarantine and retest	)	
of suspect animals in negative herd,	)	
and 32.3.2002 swine identification	)	
code: assignment of codes	)	

TO: All Concerned Persons

1. The Department of Livestock proposes to amend and repeal the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on July 30, 2018, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.3.108 QUARANTINE AND RELEASE OF QUARANTINE (1) and (2) remain the same.

(3) The person who issues the quarantine shall designate ~~on the Department of Livestock approved quarantine blank~~ the number of animals quarantined, their approximate age, breed class, species, sex, a description of the mark or brand identifying the animals, and a clear and distinct identification of the area in which they are to be quarantined.

(4) and (5) remain the same.

(6) Where quarantined animals are shipped for immediate slaughter under permit from the Montana Department of Livestock, ~~Animal Health Division~~, the veterinarian issuing the permit will use the approved federal and state form.

(7) remains the same.

AUTH: 81-2-102, 81-2-103, 81-20-101, MCA

IMP: 81-2-102, 81-2-103, 81-20-101, MCA

REASON: The department proposes to remove the specification that quarantines be issued on department-approved quarantine blanks. The department specifies what must be included in the designation of a quarantine, but no longer produces quarantine blanks for field use. Additionally, the department proposes removing reference to the Animal Health Division which no longer exists due to departmental restructure. The Animal Health Division is now the Animal Health Bureau.

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority.

32.3.201 DEFINITIONS (1) In this subchapter:

(a) through (d) remain the same.

(e) "Health certificate" means a ~~legible record written~~ certificate of veterinary inspection issued on an official health certificate form of the state of origin or an equivalent form of the U.S. Department of Agriculture attesting that the animals described thereon have been visually inspected and found to meet the entry requirements of the state of Montana. In addition, the health certificate shall conform to the requirements of ARM 32.3.206.

(f) remains the same.

(g) "Livestock" means cattle, horses, mules, asses, sheep, swine, goats, domestic bison, ~~llamas~~ camelids, and ratites.

(h) and (i) remain the same.

(j) "Permit" means an official ~~document~~ number issued by the Montana Department of Livestock after proper application which allows the movement of animals or biologics into Montana. In addition, the permit shall conform to the requirements of ARM 32.3.207.

(k) and (l) remain the same.

(m) ~~"Test-eligible"~~ Tuberculosis test-eligible bison" means all domestic bison two months of age and over.

(n) through (p) remain the same.

AUTH: 81-2-102, 81-2-103, 81-2-104, 81-20-101, MCA

IMP: 81-2-102, 81-2-103, 81-2-104, 81-20-101, MCA

REASON: The department proposes to incorporate the term "certificate of veterinary inspection" in Montana's definition of a health certificate to be consistent with federal regulations. To encompass llamas, alpacas, and camelids, the department proposes replacing the term "llama" with "camelid." To address that permits are not always issued in paper format, the department proposes to revise the definition of permit. Because the test-eligible age for different diseases is variable, the department also proposes adding the word "tuberculosis" to the term "test-eligible bison."

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking.

32.3.206 OFFICIAL HEALTH CERTIFICATE (1) Health certificates are valid for not more than 30 days after the date of inspection, except where otherwise noted in this rule, and may not be issued unless the animals described thereon comply with Montana entry requirements, and the health certificate contains: names and addresses of the consignor and consignee, place of origin of shipment, its final destination, accurate description and identification of each animal, purpose for which they are shipped, and method of transportation, ~~and identification of the transporter.~~

(2) It must indicate the health status of the animals involved, including dates and results of inspections, tests and vaccinations required by the state of Montana. A copy of the health certificate must be ~~mailed immediately to the state veterinarian of Montana, P.O. Box 202001, Helena, Montana 59620-2001~~ sent to the state veterinarian of Montana.

(3) through (5) remain the same.

AUTH: 81-2-102, 81-2-104, ~~81-2-703~~, 81-2-707, 81-20-101, MCA

IMP: 81-2-102, 81-2-104, ~~81-2-703~~, 81-20-101, MCA

REASON: The department proposes the revision of the required elements of a valid health certificate to be consistent with federal standards, to exclude requiring transporter information and revision of requirements on sending a paper copy of completed health certificates to the department. The United States Department of Agriculture (USDA) standards require that the health certificate reach the state of origin within seven business days and the state of origin must distribute the certificate to the state of destination within an additional seven business days. As states move more towards electronic options for capturing this movement data, fewer certificates are transferred by mail.

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority.



32.3.207 PERMITS (1) Permits are issued by the Montana Department of Livestock. Persons applying for permits shall provide the following information: names and addresses of the consignor and consignee, number and kind of animals, origin of shipment, final destination, purpose of shipment, method of transportation, ~~including names of transporter,~~ and such other information as the state veterinarian may require.

(2) and (3) remain the same.

(4) Permits will be ~~mailed~~ provided to persons requesting them immediately upon issue. To facilitate the movement of animals or items required to enter Montana by permit, if the prerequisites have been met, a permit number may be issued by telephone. The permit number so issued must be affixed to the health certificate if required, waybill, brand inspection certificate and any other official documents in this fashion: "Montana Permit No." followed by the number, ~~and may be used in lieu of the official permit.~~

(5) remains the same.

AUTH: 81-2-102, 81-2-103, 81-2-104, 81-2-707, 81-20-101, MCA

IMP: 81-2-102, 81-2-103, 81-2-104, 81-2-703, 81-20-101, MCA

REASON: The department proposes to remove transporter information as a requirement for obtaining an import permit to be consistent with the proposed revision of the required elements of a valid health certificate in ARM 32.3.206 and consistent with federal standards. The department also proposes removing provisions referencing mailing issued permits because permits are not always issued in paper format.

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority.

32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE AND DOMESTIC BISON (1) Female cattle and domestic bison over the age of four months imported into the state of Montana for any purpose other than immediate slaughter must be official vaccinates except as follows:

(a) cattle and domestic bison being transported or moved through Montana with no intent to unload in the state. In an emergency situation, they may be unloaded in compliance with quarantine rules promulgated by the Department of Livestock under 81-2-102, MCA;

(b) spayed cattle and domestic bison;

(c) nonvaccinated female cattle and domestic bison placed under a hold order for brucellosis vaccination or spaying within 30 days of arrival; or

(d) nonvaccinated cattle and domestic bison from a:

(i) state, area, or territory that has been brucellosis class free for ten years or more; or

(ii) brucellosis free state, area, or territory as designated by the Board of Livestock.

(2) U.S. origin nonvaccinated female cattle and domestic bison, 12 months of age and older, must have a negative brucellosis test no more than 30 days prior to arrival, unless originating from an area as defined in (1)(d).

(3) All non-U.S. origin sexually intact cattle and domestic bison 12 months of age and older must have a negative brucellosis test no more than 30 days prior to arrival.

(4) ~~Test-eligible~~ Tuberculosis test-eligible cattle and domestic bison originating from a tuberculosis accredited free U.S. state or zone require a negative tuberculosis test within 60 days prior to importation if they:

(a) are M-branded; or  
(b) are Mx-branded; or  
(c) have been in contact or exposed to M-branded, Mx-branded, or other cattle originally from Mexico; or

(d) are sexually intact dairy cattle, except:

(i) dairy cattle who originate directly from an accredited tuberculosis free herd; or

(ii) dairy cattle less than six months of age accompanied by a tuberculosis test-negative dam.

(5) remains the same.

(6) ~~Test-eligible~~ Tuberculosis test-eligible ~~cattle that are~~ dairy cattle, sporting bovines, ~~or~~ sexually intact beef cattle, and sexually intact domestic bison originating from a tuberculosis modified accredited advanced U.S. state or zone must meet one of the following:

(a) one negative tuberculosis test within 60 days prior to importation; or  
(b) one negative tuberculosis test within six months and part of a whole herd test; or

(c) originate directly from an accredited tuberculosis free herd; or

(d) less than six months of age and accompanied by a tuberculosis test-negative dam.

(7) ~~Test-eligible~~ Tuberculosis test-eligible ~~cattle that are~~ dairy cattle, sporting bovines, ~~or~~ sexually intact beef cattle, and sexually intact domestic bison originating from a tuberculosis modified accredited U.S. state or zone must meet one of the following requirements:

(a) two negative tuberculosis tests 60-120 days apart, with the second test occurring within 60 days prior to importation into Montana; or

(b) one negative tuberculosis test within 60 days prior to importation into Montana and part of a whole herd test within the last 12 months; or

(c) one negative tuberculosis test within 60 days prior to importation into Montana and originate directly from an accredited tuberculosis free herd.

(8) ~~Test-eligible~~ Tuberculosis test-eligible ~~cattle that are~~ sexually intact dairy cattle, sporting bovines, ~~or~~ sexually intact beef cattle, and sexually intact domestic bison originating from outside of the United States must have one negative tuberculosis test within 60 days prior to importation. Cattle and domestic bison originating directly from Mexico must meet the requirements set forth in ARM 32.3.212B.

(9) Cattle and domestic bison less than two months of age originating from a tuberculosis modified accredited U.S. state or zone must be quarantined for testing between two and four months of age.

(10) through (14) remain the same.

(15) Domestic bison imported under this rule must be officially identified prior to importation and listed on the official health certificate.

(16) Domestic bison imported into Montana must meet the interstate requirements set forth in Title 9 of the Code of Federal Regulations.

AUTH: 81-2-102, 81-2-103, 81-2-104, 81-2-707, MCA

IMP: 81-2-102, 81-2-104, 81-2-703, 81-2-704, MCA

REASON: The department proposes that import requirements for domestic bison reflect USDA regulations and treat bison as a program animal with the same import requirements as outlined for cattle for both brucellosis and tuberculosis.

Trichomoniasis regulations are not proposed to be extended to bison.

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority.

32.3.216 HORSES, MULES, AND ASSES (1) Horses, mules, and asses, and other equidae may enter the state of Montana provided they are transported or moved in conformity with ARM 32.3.201 through 32.3.211. All animals must be tested negative for EIA within the previous 12 months as a condition for obtaining the permit required by ARM ~~32.3.204~~ 32.3.207.

(2) through (4) remain the same.

(5) Working equids used for seasonal ranching purposes may be exempt from the requirements of this rule if the animals have been included on a current ~~grazing herd plan~~ seasonal grazing permit that has received prior approval from the Department of Livestock and the chief livestock sanitary official in a western state that reciprocates with Montana in honoring ~~grazing herd plans~~ seasonal grazing permits.

(6) Equids being moved directly to a ~~USDA-approved equine slaughter~~ or a licensed equine-approved feedlot establishment may be exempted from EIA test requirements.

(7) and (8) remain the same.

AUTH: 81-2-102, 81-2-707, MCA

IMP: 81-2-102, 81-2-703, MCA

REASON: The department proposes updating language referring to grazing herd plans to be consistent with language in ARM 32.3.212 regarding seasonal grazing permits.

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority.

32.3.307 DEPARTMENT ORDERED PSEUDORABIES TESTING

(1) remains the same.

(2) Orders shall state the approximate number and location of the animals and shall be signed by the state veterinarian ~~or any designated deputy state veterinarian~~.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, MCA

REASON: The department proposes removing the reference to deputy state veterinarians ordering testing for brucellosis because those are not responsibilities that should fall on private veterinarians out in the field as we are asking them to do work for which they are not getting reimbursed; instead, those orders will be issued by the department.

32.3.311 PROCEDURE UPON DETECTION OF PSEUDORABIES

(1) Immediately upon quarantine of a herd of animals for pseudorabies, the ~~a deputy state veterinarian~~ shall conduct an epidemiological investigation of the infected herd and premises involved to determine methods and actions necessary to extirpate the disease and to determine contact herds, exposed animals, and the sum of the factors responsible for the presence of the disease.

(2) and (3) remain the same.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-103, MCA

REASON: The department proposes removing the reference to deputy state veterinarians conducting epidemiological investigations because those are not responsibilities that should fall on private veterinarians out in the field as we are asking them to do work for which they are not getting reimbursed; instead, those investigations will be conducted by the department.

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority.

32.3.407 DEPARTMENT ORDERED BRUCELLOSIS TESTING OF ANIMALS

(1) remains the same.

(2) Orders to test shall be signed by the state veterinarian ~~or any designated deputy state veterinarian~~.

(3) remains the same.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-103, MCA

REASON: The department proposes removing the reference to deputy state veterinarians ordering testing because those are not responsibilities that should fall on private veterinarians out in the field as we are asking them to do work for which

they are not getting reimbursed; instead, those orders will be issued by the department.

32.3.411 PROCEDURE UPON DETECTION OF BRUCELLOSIS

(1) Immediately upon quarantine of a herd for brucellosis ~~a deputy~~ the state veterinarian shall conduct an epidemiological investigation of the infected herd and premises involved to determine the specific methods and actions necessary to eradicate the disease from the herd and to determine contact herds and animals.

(2) through (4) remain the same.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-103, MCA

REASON: The department proposes removing the reference to deputy state veterinarians conducting epidemiological investigations because those are not responsibilities that should fall on private veterinarians out in the field as we are asking them to do work for which they are not getting reimbursed; instead, those investigations will be conducted by the department.

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority.

32.3.412 MEMORANDUM OF UNDERSTANDING (1) Using the epidemiological report required by ARM ~~32.3.404~~ 32.3.411 as its basis, a memorandum of understanding must be developed between the owner of the infected herd and the department to establish a disease eradication effort for the infected herd. The memorandum shall cover at least the following points:

(a) through (4) remain the same.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-103, MCA

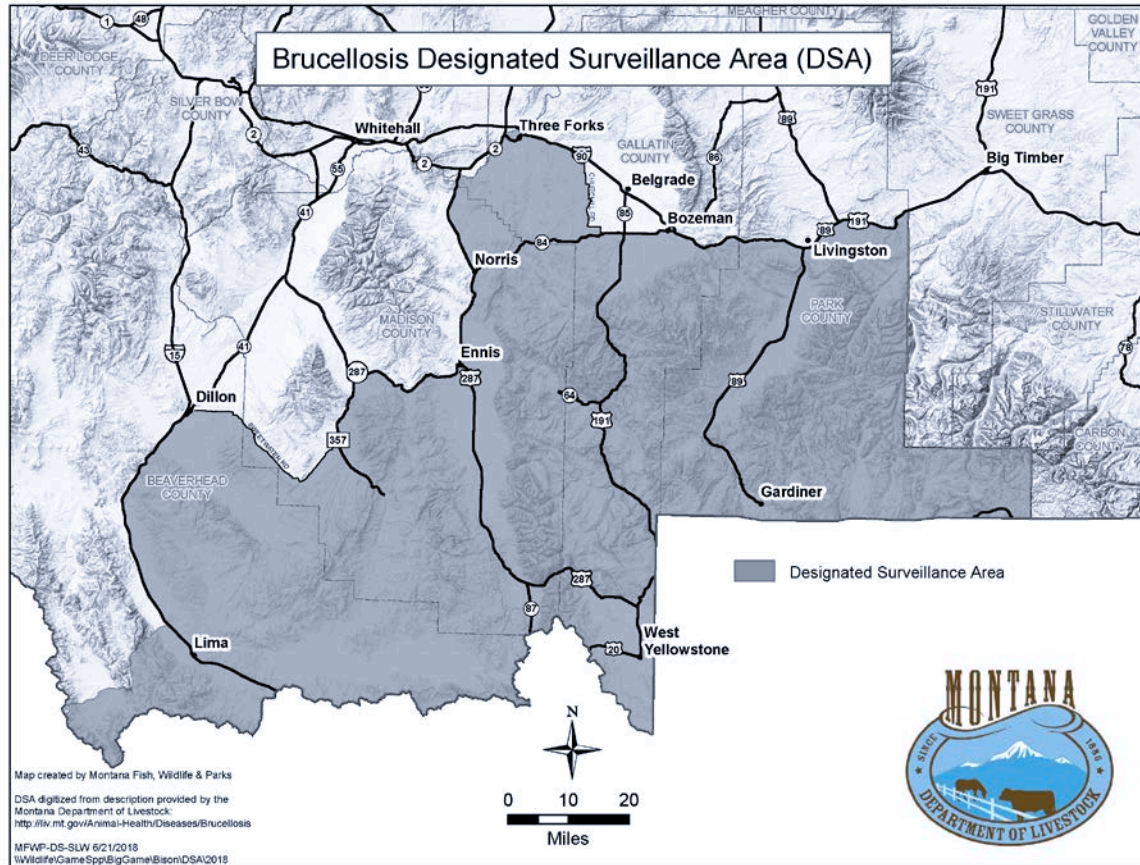
REASON: The department proposes correcting the in-text ARM citation.

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority.

32.3.433 DESIGNATED SURVEILLANCE AREA (1) through (1)(c) remain the same.

(d) Beaverhead County – from Madison-Beaverhead County line, south of Sweetwater Road to East Bench Road near Dillon, then south of East Canal Bench Road to White Lane, then south of White Lane to Blacktail Road, then south of Blacktail Road to Highway 91, then west of Highway 91 to Interstate 15 business loop, then south of Interstate 15 business loop to Interstate 15, then east of Interstate 15, then south of Dell Airport Road, then east of Westside Frontage Road, then south of Big Sheep Creek Road, then south of Meadow Creek to the Montana/Idaho border.

(2) A map of the designated surveillance area follows:

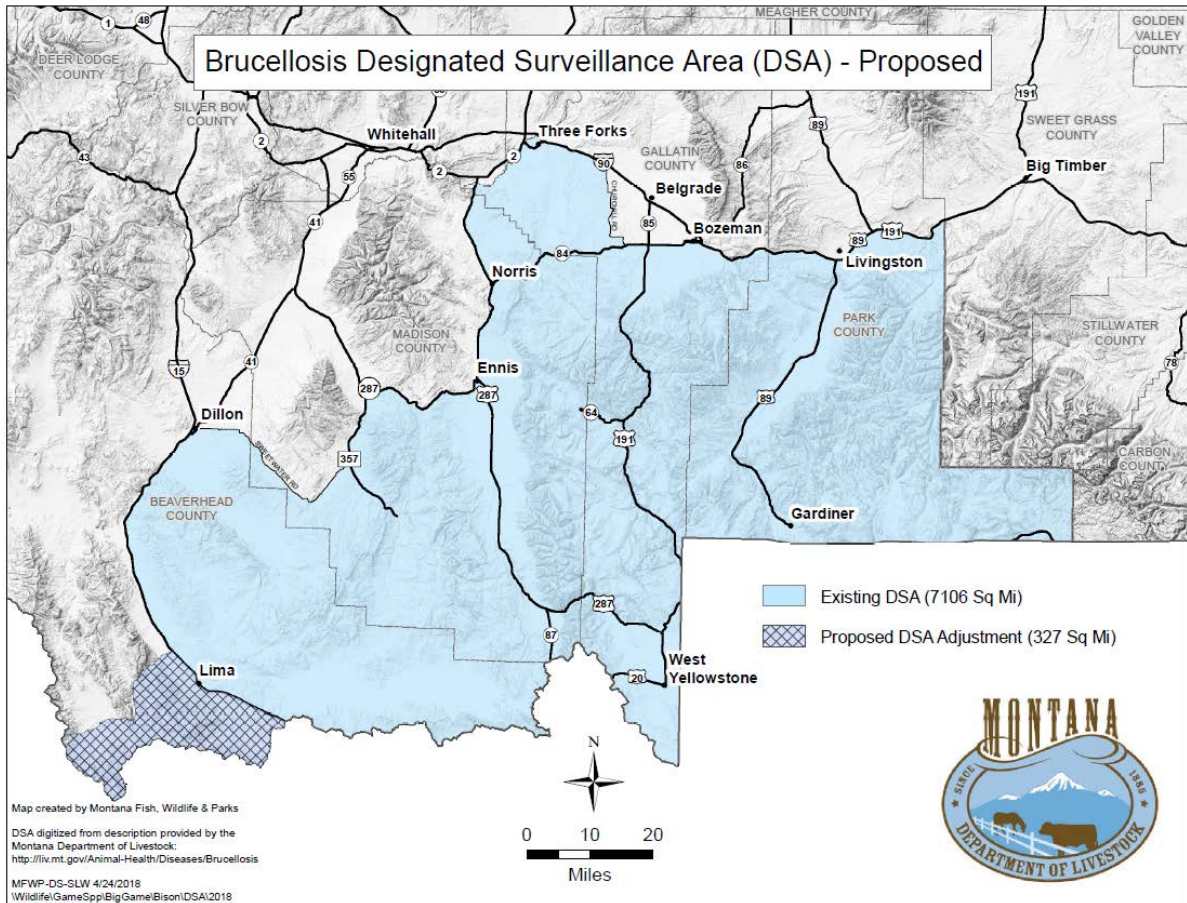


AUTH: 81-2-102, 81-2-103, 81-2-104, MCA  
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, MCA

REASON: The department proposes a designated surveillance area boundary change. The map below shows the proposed boundary addition. Our prior map without the proposed addition is being stricken.

A recent elk study conducted in the Tendoy Mountains (outside of the current designated surveillance area), by the Montana Department of Fish, Wildlife and Parks revealed a brucellosis-exposed elk indicating a prevalence of the disease in wildlife in the area. Due to the potential of livestock exposure to *Brucella* and to help protect Montana livestock producers and its trading partners from the introduction of potentially infected livestock, a designated surveillance area boundary change is necessary to include cattle or domestic bison that may utilize ground within the range of these elk.





**32.3.436 BRUCELLOSIS VACCINATION WITHIN THE COUNTIES IN WHICH THE DSA IS LOCATED** (1) Within the entirety of counties in which the DSA is located all All sexually intact female cattle and domestic bison that are four 12 months of age or older as of January 1 of any year in a county that borders or contains the DSA must be 0 official Calhhood V vaccinates (OCV).

(a) ~~Female cattle or domestic bison that are not OCV eligible may become Official Adult Vaccinates (AV).~~

(a) (b) Variances or exceptions to requirements will be considered on an individual basis by the administrator.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA

IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110, 81-2-111, MCA

REASON: The department proposes to amend the rule to include vaccination requirements for counties that border a DSA, including designated surveillance areas in adjacent states, due to the inability to control and predict the movement of brucellosis positive elk. The brucellosis vaccination requirements in areas outside of the DSA proves a buffer to prevent the spread of brucellosis in domestic livestock. In addition to the vaccination requirements in the current counties of Beaverhead, Gallatin, Madison, and Park, this amendment would add Broadwater, Carbon, Jefferson, Stillwater, and Sweet Grass counties.

Implementing citations are being updated to accurately reflect sources of rulemaking authority.

32.3.1003 CONTAMINATED PREMISES (1) The stalls, stables, sheds, equipment, utensils, and premises occupied or contaminated by animals that have died of anthrax must be completely cleaned and disinfected under the supervision of ~~a deputy~~ the state veterinarian.  
(2) remains the same.

AUTH: 81-2-102, MCA  
IMP: 81-2-102, MCA

REASON: The department proposes removing the reference to deputy state veterinarians supervising, cleaning, and disinfecting anthrax-positive premises because those are not responsibilities that should fall on private veterinarians out in the field as we are asking them to do work for which they are not getting reimbursed; instead, these activities will be conducted by the department.

32.4.101 DEFINITIONS In this subchapter the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in 87-4-406, MCA.

(1) through (4) remain the same.

(5) "Certificate of veterinary inspection" means the Department of Livestock inspection certificate form designed to fulfill the requirements of a certificate of inspection under ARM ~~32.18.204~~ 32.3.201 and conforming to the requirements of the health certificate under ARM 32.3.206, for the inspection of alternative livestock. The form must include the number, species, age, sex, individual animal identification, owner, alternative livestock farm information and the reason for the inspection.

(6) through (18) remain the same.

(19) "Herd tattoo" means the recorded whole herd mark or brand required by ~~81-3-104~~ 81-3-102, MCA for alternative livestock identification.

(20) through (32) remain the same.

AUTH: 87-4-422, MCA  
IMP: 87-4-422, MCA

REASON: The department proposes in-text corrections to the ARM and MCA citations.

32.4.202 IDENTIFICATION OF OMNIVORES AND CARNIVORES

(1) Omnivores and carnivores shall be tattooed as required by ~~87-4-234~~ 87-6-701, MCA.

(2) and (3) remain the same.

AUTH: 87-4-422, MCA



IMP: 87-4-422, MCA

REASON: The department proposes correcting the in-text MCA citation.

32.4.601 IMPORTATION OF ALTERNATIVE LIVESTOCK (1) through (4)(a)(ii) remain the same.

(iii) ~~For elk, the~~ The herd of origin must be certified as free of central nervous system (CNS) symptoms for the last five years; and

(iv) through (10) remain the same.

AUTH: 81-2-102, 81-2-103, 81-2-402, 81-2-707, 87-4-422, MCA

IMP: 81-2-102, 81-2-103, 81-2-402, 81-2-403, 81-2-703, ~~81-2-707~~, 81-3-102, 87-4-414, 87-4-422, MCA

REASON: The department proposes including deer in the requirement that source herds be free from signs of neurologic disease.

Implementing citation is being updated to accurately reflect sources of rulemaking authority.

4. The department proposes to repeal the following rules:

32.3.224 DOMESTIC BISON

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-103, MCA

REASON: The department has proposed that import requirements for domestic bison be consolidated in ARM 32.3.212 with those for cattle making this rule unnecessary.

32.3.430 QUARANTINE AND RETEST OF SUSPECT ANIMALS IN  
NEGATIVE HERD

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, MCA

REASON: The department proposes repealing this rule as the language is not consistent with current scientific practice. Currently the department manages suspect cases in consultation with the USDA Animal and Plant Health Inspection Service personnel.

32.3.2002 SWINE IDENTIFICATION CODE: ASSIGNMENT OF CODES

AUTH: 81-2-102, MCA

IMP: 81-2-102, MCA

REASON: The department proposes repealing this rule as this practice is no longer performed due to the implementation of premises identification numbers at the national level. The department no longer assigns unique code numbers for Montana swine producers.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to Department of Livestock, 301 N. Roberts St., Room 306, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., August 3, 2018.

6. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., August 3, 2018.

7. If the department 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 209 persons based on new and current DSA landowners, approximately 600 Montana veterinarians, bison producers paying per capita, cattle producer operations with inventory in new OCV counties, and alternative livestock producers.

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

9. 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 amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

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

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

Certified to the Secretary of State June 26, 2018.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.104.106 and 37.104.212 ) PROPOSED AMENDMENT  
pertaining to updates to emergency )  
medical service records and reports )

TO: All Concerned Persons

1. On July 26, 2018, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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 July 16, 2018, to advise us of the nature of the accommodation that you need. Please contact Todd Olson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.104.106 LICENSE APPLICATION REQUIREMENTS (1) An application for a license to conduct an emergency medical service, including the renewal of a license, must be made on electronic forms specified by the department, accompanied by the license fee, and received by the department not less than 30 days prior to the commencement of a new emergency medical service or 15 days prior to the expiration of the license, in the case of an application for renewal.

(2) through (6) remain the same.

(7) The service license must be updated within 10 days when any information contained in the service license application changes.

(7) through (9) remain the same, but are renumbered (8) through (10).

~~(10)~~ (11) In a catastrophe or major emergency when licensed ambulances are insufficient to render services required, ~~nonlicensed~~ non-licensed emergency medical services may be used.

AUTH: 50-6-323, MCA

IMP: 50-6-306, 50-6-313, 50-6-323, MCA

37.104.212 RECORDS AND REPORTS (1) remains the same.

(2) Ambulance services and nontransporting non-transporting units must provide data as identified by the department in this rule.

(3) remains the same.

(4) ~~The following NEMSIS demographic data elements for ambulance service or nontransporting unit licensing must be reported and updated no less than annually:~~

~~D01\_01 EMS Agency Number  
D01\_02 EMS Agency Name  
D01\_03 EMS Agency State  
D01\_04 EMS Agency County  
D01\_07 Level of Service  
D01\_08 Organizational Type  
D01\_09 Organization Status  
D01\_10 Statistical Year  
D01\_12 Total Service Size Area  
D01\_13 Total Service Area Population  
D01\_14 911 Call Volume per Year  
D01\_15 EMS Dispatch Volume per Year  
D01\_16 EMS Transport Volume per Year  
D01\_17 EMS Patient Contact Volume per Year  
D01\_19 EMS Agency Time Zone  
D01\_21 National Provider Identifier  
D02\_01 Agency Contact Last Name  
D02\_02 Agency Contact Middle Name/Initial  
D02\_03 Agency Contact First Name  
D02\_04 Agency Contact Address  
D02\_05 Agency Contact City  
D02\_06 Agency Contact State  
D02\_07 Agency Contact Zip Code  
D02\_08 Agency Contact Telephone Number  
D02\_09 Agency Contact Fax Number  
D02\_10 Agency Contact Email Address  
D03\_01 Agency Medical Director Last Name  
D03\_02 Agency Medical Director Middle Name/Initial  
D03\_03 Agency Medical Director First Name  
D03\_04 Agency Medical Director Address  
D03\_05 Agency Medical Director City  
D03\_06 Agency Medical Director State  
D03\_07 Agency Medical Director Zip Code  
D03\_08 Agency Medical Director Telephone Number  
D03\_09 Agency Medical Director Fax Number  
D03\_11 Agency Medical Director Email Address  
D04\_02 EMS Unit Call Sign  
D05\_01 Station Name  
D05\_02 Station Number  
D05\_04 Station GPS  
D05\_05 Station Address~~

~~D05\_06 Station City~~  
~~D05\_07 Station State~~  
~~D05\_08 Station Zip~~  
~~D05\_09 Station Telephone Number~~  
~~D06\_01 Unit/Vehicle Number~~  
~~D06\_03 Vehicle Type~~  
~~D06\_04 State Certification/Licensure Levels~~  
~~D06\_07 Vehicle Model Year~~  
~~D06\_08 Year Miles/Hours Accrued~~  
~~D06\_09 Annual Vehicle Hours~~  
~~D06\_10 Annual Vehicle Miles~~  
~~D07\_01 Personnel's Agency ID Number~~  
~~D07\_02 State/Licensure ID Number~~  
~~D07\_05 Personnel's Level of Certification/Licensure for Agency~~  
~~D08\_01 EMS Personnel's Last Name~~  
~~D08\_02 EMS Personnel's Middle Name/Initial~~  
~~D08\_03 EMS Personnel's First Name~~  
~~D08\_04 EMS Personnel's Mailing Address~~  
~~D08\_05 EMS Personnel's City of Residence~~  
~~D08\_06 EMS Personnel's State~~  
~~D08\_07 EMS Personnel's Zip Code~~  
~~D08\_09 EMS Personnel's Home Telephone~~  
~~D08\_10 EMS Personnel's Email Address~~  
~~D08\_15 State EMS Certification Licensure Level~~  
~~D08\_17 State EMS Current Certification Date~~  
~~(5) The following NEMSIS EMS data elements must be reported by~~  
~~ambulance services for each incident:~~  
~~E01\_01 Patient Care Report Number~~  
~~E02\_01 EMS Agency Number~~  
~~E02\_04 Type of Service Requested~~  
~~E02\_05 Primary Role of the Unit~~  
~~E02\_06 Type of Dispatch Delay~~  
~~E02\_07 Type of Response Delay~~  
~~E02\_08 Type of Scene Delay~~  
~~E02\_09 Type of Transport Delay~~  
~~E02\_10 Type of Turn-Around Delay~~  
~~E02\_12 EMS Unit Call Sign (Radio Number)~~  
~~E02\_20 Response Mode to Scene~~  
~~E03\_01 Complaint Reported by Dispatch~~  
~~E03\_02 EMD Performed~~  
~~E05\_02 PSAP Call Date/Time~~  
~~E05\_04 Unit Notified by Dispatch Date/Time~~  
~~E05\_05 Unit En Route Date/Time~~  
~~E05\_06 Unit Arrived on Scene Date/Time~~  
~~E05\_07 Arrived at Patient Date/Time~~  
~~E05\_09 Unit Left Scene Date/Time~~  
~~E05\_10 Patient Arrived at Destination Date/Time~~

~~E05\_11 Unit Back in Service Date/Time~~  
~~E05\_13 Unit Back at Home Location Date/Time~~  
~~E06\_08 Patient's Home Zip Code~~  
~~E06\_11 Gender~~  
~~E06\_12 Race~~  
~~E06\_13 Ethnicity~~  
~~E06\_14 Age~~  
~~E06\_15 Age Units~~  
~~E07\_01 Primary Method of Payment~~  
~~E07\_34 CMS Service Level~~  
~~E07\_35 Condition Code Number~~  
~~E08\_05 Number of Patients at Scene~~  
~~E08\_06 Mass Casualty Incident~~  
~~E08\_07 Incident Location Type~~  
~~E08\_15 Incident ZIP Code~~  
~~E09\_01 Prior Aid~~  
~~E09\_02 Prior Aid Performed by~~  
~~E09\_03 Outcome of the Prior Aid~~  
~~E09\_04 Possible Injury~~  
~~E09\_11 Chief Complaint Anatomic Location~~  
~~E09\_12 Chief Complaint Organ System~~  
~~E09\_13 Primary Symptom~~  
~~E09\_14 Other Associated Symptoms~~  
~~E09\_15 Provider's Primary Impression~~  
~~E09\_16 Provider's Secondary Impression~~  
~~E10\_01 Cause of Injury~~  
~~E11\_01 Cardiac Arrest~~  
~~E11\_02 Cardiac Arrest Etiology~~  
~~E11\_03 Resuscitation Attempted~~  
~~E12\_01 Barriers to Patient Care~~  
~~E12\_19 Alcohol/Drug Use Indicators~~  
~~E18\_03 Medication Given~~  
~~E18\_08 Medication Complication~~  
~~E19\_03 Procedure~~  
~~E19\_05 Number of Procedure Attempts~~  
~~E19\_06 Procedure Successful~~  
~~E19\_07 Procedure Complication~~  
~~E20\_07 Destination Zip Code~~  
~~E20\_10 Incident/Patient Disposition~~  
~~E20\_14 Transport Mode from Scene~~  
~~E20\_16 Reason for Choosing Destination~~  
~~E20\_17 Type of Destination~~  
~~E22\_01 Emergency Department Disposition~~  
~~E22\_02 Hospital Disposition~~

(4) For ambulance services using NEMSIS version 3.4 software, the data elements designated as national requisite fields must be reported for each incident.

(6) remains the same, but is renumbered (5).

~~(7)~~ (6) Ambulance services are not required to submit other NEMSIS data elements, but may do so. ~~Nontransporting~~ Non-transporting units are not required to submit NEMSIS data, but may do so.

(8) remains the same, but is renumbered (7).

~~(9)~~ (8) The department adopts and incorporates by reference the National Emergency Medical Services Information System (NEMSIS) Uniform Pre-Hospital Emergency Medical Services Dataset, Version 2.2.1, ~~(5/04/2010)~~ 3.4 (7/13/2016) published by the National Highway Traffic Safety Administration (NHTSA). A copy may be obtained at ~~<http://www.nemsis.org/v2/downloads/datasetDictionaries.html>~~ [https://nemsis.org/media/nemsis\\_v3/release-3.4.0/DataDictionary/PDFHTML/DEMEMS/NEMSISDataDictionary.pdf](https://nemsis.org/media/nemsis_v3/release-3.4.0/DataDictionary/PDFHTML/DEMEMS/NEMSISDataDictionary.pdf) or from the Department of Public Health and Human Services, Public Health and Safety Division, Emergency Medical Services and Trauma Systems Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(10) through (12) remain the same, but are renumbered (9) through (11).

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.104.106 and 37.104.212.

The department's EMS and Trauma Section has purchased new software to enable EMS services to apply for and update their service licenses and to complete electronic patient care records. ARM 37.104.212 requires EMS services to provide the department with minimum data (the data fields designated as national data elements of the National EMS Information System - NEMSIS data standard).

The department's current software is based upon an older NEMSIS 2.2.1 standard and current rule requires data be submitted in that format. The new software is based upon an updated NEMSIS 3.4 data standard. EMS services that have their own NEMSIS software but cannot meet the NEMSIS version 3.4 standards may be issued temporary waivers if their vendor is imminently upgrading to the NEMSIS 3.4 version or if there is a financial burden to the service that requires more time in order to be compliant with the version 3.4 standard.

The rules have also been revised for general clarity.

#### ARM 37.104.106

This rule requires an EMS service that is applying for a new license or renewing a license to complete an application on forms specified by the department and to submit the required information and fee 30 days before commencement of the service or expiration of the current license. The department proposes to amend (1) to clarify that the electronic forms specified by the department under the web-based



OPHI eLicensing system will be required for license applications. Additionally, the department is proposing to decrease the 30-day requirement for receipt of a license renewal to 15 days. As the current licensing system is web-based, review of applications can be done faster than what was necessary to review paper forms.

The department proposes to amend (7) to require EMS services to update any changes, deletions, or additions to their license application within 10 business days. While this has been an assurance that EMS services have agreed to in the service license application for some time, putting this into rule will reinforce the significance of the department's need to know when EMS services managers, service medical directors, service addresses, and other license information has changed.

#### ARM 37.104.212

This administrative rule describes requirements for completion and submission of patient care records and other data to the department and hospitals. ARM 37.104.212(4) currently lists each NEMSIS national demographic data field and numerous license application data fields that must be reported to the department; (5) lists each patient care data field that must be reported.

The proposed rule amendments seek to remove the specific listing of each data field in rule and alternately require services submitting NEMSIS EMS data elements designated as "national fields" to the department. The NEMSIS data dictionary describes specifications for over 400 data elements and denotes certain fields as national data elements. Further, the department proposes to amend the NEMSIS data standard version adopted and incorporated by reference from the current version 2.2.1 to 3.4. Because NEMSIS 3.4 is more user-friendly, EMS services will likely spend less time meeting data reporting requirements than via the older 2.2.1 version software.

#### Fiscal Impact

The proposed rule amendments will impose minimal fiscal impact as the new NEMSIS software has been purchased with grant funds and is being deployed to all services that wish to use it. The fiscal costs to EMS services that are required to submit data will also be minimal as we have a statewide license for the software and all EMS services are invited to use it at no cost.

It is possible that some services may choose to purchase their own software, but a majority are preparing to upgrade their software through the department. For EMS services that cannot expediently upgrade to the new standard, the department can approve waivers if their current software is being upgraded to version 3.4, or the service needs more time to budget to upgrade their software. Further, there may be a cost benefit to collecting electronic data as that more complete electronic patient care records may generate increased reimbursements because of increased accuracy in data entry and billing.

The proposed rulemaking is estimated to affect 120+ licensed ambulance services that are required to submit minimum data to the department.

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: Todd Olson, 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., August 3, 2018.

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

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

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

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

/s/ Shannon L. McDonald  
Shannon L. McDonald  
Rule Reviewer

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

Certified to the Secretary of State June 26, 2018.

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 37.57.101, 37.57.102, ) PROPOSED AMENDMENT AND  
37.57.105, 37.57.106, 37.57.109, ) REPEAL  
37.57.111, 37.57.112, and 37.57.117, )  
and the repeal of ARM 37.57.110 )  
pertaining to financial assistance for )  
children and youth with special health )  
care needs )

TO: All Concerned Persons

1. On July 26, 2018, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

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 July 16, 2018, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.57.101 PURPOSE OF RULES (1) The purpose of the children's special health services program rules is to provide ~~health care~~ treatment and enabling services for children and youth with special health care needs.

AUTH: 50-1-202, MCA  
IMP: 50-1-202, MCA

37.57.102 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this subchapter:

(1) remains the same.

(2) "Child or Youth with Special Health Care Needs" (CYSHCN) means a child or youth, under the age of 22, who has or is at increased risk for chronic physical, developmental, behavioral, or emotional condition and who also requires

health and related services of a type or amount beyond that required by children generally.

(3) remains the same.

(4) "CSHS" means the children's special health services program of the department, authorized by 50-1-202, MCA, that serves children and youth with special health care needs.

(5) through (8) remain the same.

(9) "Enabling services" means nonclinical services that enable individuals to access health care and improve health outcomes. Enabling services include, but are not limited to: case management, care coordination, referrals, home visiting, respite care, specialized daycare or preschool, translation/interpretation, transportation, eligibility assistance, health education for individuals or families, and outreach.

(9) and (10) remain the same but are renumbered (10) and (11).

~~(11)~~ (12) "Financial Assistance" means payment by the department for CSHS-authorized ~~medical care~~ treatment and enabling services for a CYSHCN eligible for the CSHS program.

~~(12)~~ (13) "HMK" means Healthy Montana Kids (Children's Health Insurance Program or CHIP) insurance plan administered by the department.

~~(13)~~ (14) "HMK Plus" means Healthy Montana Kids Plus (children's Medicaid) plan administered by the department.

~~(14)~~ (15) "Initial diagnosis and evaluation" means taking a medical history and performing a physical examination, medical procedures, laboratory tests, hearing and other diagnostic tests, or other procedures necessary for the diagnosis of a condition ~~for the purpose of establishing CSHS eligibility and possible treatment for a suspected or known disability.~~

~~(15) "Interdisciplinary Team" means a group of allied health professionals and a patient, family, or both a patient and family who work together to address the shared health goals.~~

~~(16) "Medical advisor" means a Montana licensed physician, who serves as an advisor to the department, with expertise in treating children and youth with special health care needs.~~

~~(17)~~ (16) "Poverty income guidelines" means the poverty income guidelines published in ~~2015~~ 2018 in the Federal Register by the U.S. Department of Health and Human Services. The department adopts and incorporates by reference the federal poverty guidelines that establish income thresholds according to family unit size for purposes of determining eligibility for government assistance or services and that are published in the ~~February 2015~~ January 2018, Federal Register. A copy of the ~~2015~~ 2018 poverty guidelines may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, Children's Special Health Services Program, 1400 Broadway, Rm A-116, Helena, MT 59620, telephone (406) 444-3617.

(18) remains the same but is renumbered (17).

~~(19)~~ (18) "Provider" means a supplier of medical care or services, enabling services, interventions, medical appliances, prescribed medications, formula or foods, and consultations.

(19) "Risk category" means any condition of a child or youth's life which

qualifies them as being at an increased risk for chronic physical, development, behavioral, or emotional condition, further qualifying them as a CYSHCN. This may include but is not limited to: living in poverty, in the foster care or Child Protective Services system, having a parent with a disabling condition, multiple adverse childhood experiences, or homelessness.

(20) "Services" means ~~assistance other than financial assistance provided to a CYSHCN, such as resource and referral information, transition information, specialty clinic services, and care coordination~~ enabling or treatment services covered by the rule.

(21) and (22) remain the same.

(23) "Treatment" means medical, corrective, and/or surgical intervention to alleviate a disabling condition or as recommended by a provider based on a CYSHCN's risk category, including for initial testing and diagnosis. This includes medications and medical equipment.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.105 GENERAL REQUIREMENTS FOR CSHS FINANCIAL ASSISTANCE (1) In order to receive CSHS financial assistance for a particular benefit:

~~(a) a CYSHCN must meet the eligibility requirements of ARM 37.57.106; and~~

~~(b) a CYSHCN must have an eligible condition that is listed in ARM 37.57.110.~~

~~(2) The benefit in question must be one of the covered benefits cited in ARM 37.57.110, and the provider must meet the standards of ARM 37.57.117.~~

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.106 ELIGIBILITY FOR CSHS FINANCIAL ASSISTANCE (1) Eligibility criteria for CSHS financial assistance are:

~~(a) an individual under the age of 22 who meets the definition of a child or youth with special health care needs (CYSHCN); a CYSHCN with either a disabling physical condition that can be substantially improved or corrected with surgery, or a condition or disease that can be cured, improved, or stabilized with medical treatment, or is suspected of having a disabling physical condition or a medical condition or disease;~~

~~(b) a CYSHCN is under 19 years of age or up to 22 years of age and has a qualifying condition for which long term care is needed and approved by the interdisciplinary team or the program's medical advisor;~~

~~(c) (b) a resident of the state of Montana and either a U.S. citizen or a qualified alien as defined under federal statute; and~~

(c) in need of a treatment or enabling services related to their disabling condition or risk category, which is recommended by a medical professional, where an out-of-pocket expense would be the responsibility of the family and no other means of payment is available to cover the out-of-pocket expenses.

- (2) Family income must be verified to determine eligibility. ~~The department~~ CSHS will request documentation of income from the applicant.
- (a) Family income may include one or more of the following:
- (i) and (ii) remain the same.
  - (iii) if the parent with whom the child resides the majority of the year has remarried, the stepparent's income is imputed to the parent's income with whom the child resides the majority of the year; and
  - (iv) through (c) remain the same.
- (d) A family whose income, less any out-of-pocket expenses for health insurance premiums, care expenses for children, disabled or elderly adults while adults are working, and earned income disregards is at or less than 300% of the federal poverty income guidelines and one of the following:
- (i) remains the same.
  - (ii) eligible for HMK Plus or HMK, but in need of services or financial assistance that are not covered by HMK Plus or HMK, or determined ~~nonaccessible~~ inaccessible but are covered by CSHS; or
  - (iii) and (3) remain the same.
- (4) Eligibility begins on the date an application is received by CSHS and continues for the duration of the federal fiscal year in which the application is received unless the age of the CYSHCN precludes them from participation or the CYSHCN no longer resides in Montana. Services provided up to six months prior to the date of eligibility are reimbursable by CSHS.
- (5) remains the same.
- (6) A CYSHCN attending an interdisciplinary team pediatric specialty clinic funded by CSHS does not need to apply for financial assistance to cover the cost of clinic visits.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.109 APPLICATION PROCEDURE FOR CSHS FINANCIAL ASSISTANCE (1) A person who desires CSHS financial assistance for a CYSHCN must submit a completed CSHS financial assistance application, along with required supporting documents. This application is available by contacting CSHS at 1-800-762-9891 or visiting [www.cshs.mt.gov](http://www.cshs.mt.gov). ~~required by the department, to the department on a form it prescribes.~~

- (2) and (3) remain the same.
- (4) When the CYSHCN is determined eligible, the department will send the applicant a written notice ~~of that fact~~ specifying which services are eligible for CSHS financial assistance and the term of eligibility.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.111 PAYMENT LIMITS AND REQUIREMENTS (1) The department will provide financial assistance for a CSHS-eligible CYSHCN with a covered condition:

(a) through (c) remain the same.

(d) ~~up to the maximum of \$2,000 for speech, physical, nutritional, occupational, or respiratory therapy related to a covered condition.~~ for a CYSHCN under age three, CSHS will pay after the early intervention program, part C, of the disabilities services division; and

(e) remains the same.

(2) ~~The department~~ When possible, CSHS will pay providers directly for CSHS-eligible services and will not reimburse clients. Clients may be reimbursed if the services were rendered prior to eligibility and proper documentation is provided as requested by CSHS.

(3) The department will pay eligible providers after the department receives a signed authorization, claim form, or invoice, and requested documentation that the care has been provided.

(4) and (5) remain the same.

(6) The department will pay up to the following limits for orthodontia care:

(a) ~~Payment for a~~ Orthodontia may only be covered for CYSHCN for CSHS clients who have a cleft or craniofacial conditions requiring orthodontia due to a medical condition with orthodontic implications. This may include but is not limited to: cleft/craniofacial anomalies, facial deformities, speech impediments, Treacher-Collins Syndrome, Marfan Syndrome, or Craniosynostosis will be subject to the maximum allowable payment as set forth in CSHS rule.

(b) ~~Payment will be based on a treatment plan submitted by the provider that meets the requirements of the department's orthodontic coverage and reimbursement guidelines and that includes, at a minimum, a description of the plan of treatment, the provider's estimated usual and customary charge, and a time line for treatment. The maximum payable amount for any one phase of treatment is 85%. The department will reimburse 40% of the CSHS allowed amount upon initial billing for each phase of treatment, the remainder being paid in monthly installments as determined by the time line established in the provider's treatment plan for completing orthodontic care. Payment is also subject to any health care coverage a client may have.~~

(7) remains the same.

(8) ~~Hospitals and surgicenters will be paid 85% of the actual submitted charge, or after all third-party payers, if any, have paid the provider, in which case the department pays any balance remaining for services to the lower of the health care coverage allowed amount or the CSHS allowed amount for the services on the date of occurrence for inpatient and outpatient services.~~

(9) ~~Dentists will be paid 85% of billed charges, or after all third-party payers, if any, have paid the provider, in which case the department pays any balance remaining for services to the lower of the health care coverage allowed amount or the CSHS allowed amount for an annual dental exam and dental extractions related to active or anticipated orthodontic treatment.~~

(10) and (11) remain the same but are renumbered (8) and (9).

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.112 INFORMAL RECONSIDERATION PROCEDURE (1) A CYSHCN ~~child or youth~~ who has been denied eligibility for CSHS, a provider who has been denied reimbursement for services or covered benefits, or anyone who is otherwise adversely affected by denial for CSHS financial assistance ~~an action taken by the department~~ may have an informal reconsideration ~~before the department by~~ The party requesting such a reconsideration must do so within 60 days after notice of the adverse action in question has been placed in the mail or otherwise communicated to the aggrieved party.

(2) through (6) remain the same.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.117 CSHS PROVIDERS RECEIVING CSHS FUNDS:  
REQUIREMENTS (1) In order to be a CSHS provider for a CSHS client, a provider must meet the following requirements:

(a) A physician or surgeon must:

(i) remains the same.

~~(ii) be board eligible or board certified in the specialty for the condition being treated, or working in cooperation with a physician who is, unless the provider submits a curriculum vitae to the department and the CSHS medical advisor approves the provider as a specialty provider;~~

(iii) remains the same but is renumbered (ii).

(b) through (d) remain the same.

(e) Any provider other than those listed in (1)(a) through (1)(d) must:

~~(i) be certified and/or licensed by the appropriate Montana authority, or if Montana has no certification or licensure requirements for the provider, be certified by a nationally recognized professional organization in the provider's area of expertise; and~~

~~(ii) shall provide services as ordered or prescribed by the attending physician.~~

(2) A provider must immediately supply the department with requested reports ~~in order to permit effective evaluation of claims.~~

(3) remains the same.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

4. The department proposes to repeal the following rule:

37.57.110 CONDITIONS AND SERVICES FOR CSHS FINANCIAL ASSISTANCE found on page 37-12576 of the Administrative Rules of Montana.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

5. STATEMENT OF REASONABLE NECESSITY



The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.57.101, 37.57.102, 37.57.105, 37.57.106, 37.57.109, 37.57.111, 37.57.112, and 37.57.117, and is proposing to repeal ARM 37.57.110 pertaining to Children's Special Health Services (CSHS). CSHS is a public health program in the Family and Community Health Bureau. The program is required by the Federal Maternal Child Health Block Grant (MCHBG) to support development and implementation of comprehensive, culturally competent, coordinated systems of care for children and youth with special health care needs (CYSHCN). CYSHCN are children and youth who have or are at risk for chronic physical, developmental, behavioral, or emotional condition and who require health and related services of a type or amount beyond that required by children generally.

The purpose of the proposed rule amendments is to serve more families through the CSHS Financial Assistance Program. The changes will expand the program to a broader range of children and youth with CYSHCN by eliminating required diagnosis and instead, referencing the MCHBG definition of CYSHCN. Additionally, these proposed amendments will allow for reimbursement of "enabling services."

The alternative to the proposed rule amendments would be to make no changes to the existing rules. If this rule is not amended CSHS will not be able to expend these funds as budgeted.

#### ARM 37.57.101

The department is proposing amendments to ARM 37.57.101 to remove the term "health care" and replace it with "treatment and enabling services." These terms are defined in ARM 37.57.102. The proposed amendment also adds the word "youth" to "children and youth with special health care needs." This is to match the Title V Maternal and Child Health definition.

#### ARM 37.57.102

The department is proposing to add definitions for "enabling services" and "risk category" to better define the population served and add clarifying language to several other definitions. It also removes definitions for "Interdisciplinary Team" and "Medical Advisor," which are no longer relevant to this rule. These definitions are no longer necessary because of the elimination of the requirement that the medical advisor or interdisciplinary team approve long term care for CYSHCN under this rule. Additionally, CSHS no longer has a medical advisor after the repeal of the advisory committee rule in 2003. The department is fixing the word "development" in (2), to read "developmental."

#### ARM 37.57.105

The department is proposing to remove the eligible condition, covered benefits, and provider standards requirements in order to allow for all CYSHCN to receive both enabling and treatment services from medical and service providers.

#### ARM 37.57.106

The department is proposing amendments to remove certain eligibility requirements for CYSHCN receiving financial assistance under this rule and add language clarifying coverage of treatment and enabling services for all CYSHCN. Language is being proposed to retroactively cover services up to 30 days prior to the application date. This is to cover families who seek services prior to knowing this service is available. With a new diagnosis or addition of a risk category (e.g., a child entering the foster care system) this is common.

#### ARM 37.57.109

The department is proposing amendments to ARM 37.57.109 to make it easier to find an application for CSHS financial assistance.

#### ARM 37.57.110

The department is proposing to repeal ARM 37.57.110 which describes services and conditions for which CSHS financial assistance is available. The services are being expanded and conditions eliminated as part of this rule change.

#### ARM 37.57.111

The department is proposing to amend ARM 37.57.111 to remove language about specific conditions and services. The proposed amendment will allow CSHS to reimburse families when necessary, if a service has already been paid for by the family. This proposed amendment clarifies medical necessity for orthodontia care and removes a section detailing requirements for orthodontic treatment phases to make the requirements more straightforward for families and providers. Details about payments to specific types of providers is removed so different types of medical and enabling service providers can be reimbursed.

#### ARM 37.57.112

The department is proposing amendments to this rule to clarify the reconsideration procedures because the language was confusing and redundant.

#### ARM 37.57.117

The department is proposing to amend ARM 37.57.117 to remove some provider requirements and clarify that these requirements are for medical providers to be able to pay providers who are not board certified in a specialty. Montana has a medical

provider shortage and access to board certified providers in specialty care is not always feasible.

#### Fiscal Impact

The department expects the proposed amendments in this notice to have a fiscal impact of \$100,000. This is the annual budget for the program which has not been expended in recent years because these rule amendments are restrictive. These rule amendments will allow CSHS to use these funds as they are intended and budgeted.

6. The department intends for these proposed rule amendments to be applied retroactive to August 1, 2018. There is no negative fiscal impact.

7. 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: Gwen Knight, 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., August 3, 2018.

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

9. 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 7 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Shannon L. McDonald  
Shannon L. McDonald  
Rule Reviewer

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

Certified to the Secretary of State June 26, 2018.

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 12.11.630 pertaining to wake )  
restrictions near Broadwater Bay of )  
the Missouri River )

TO: All Concerned Persons

1. On May 11, 2018, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-485 pertaining to the proposed amendment of the above-stated rule at page 917 of the 2018 Montana Administrative Register, Issue Number 9.

2. The commission has amended ARM 12.11.630 as proposed.

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

Comment 1: The commission received many comments in general support and in general opposition to the rule amendment.

Response 1: The commission appreciates the interest and participation in this rulemaking process.

Comment 2: The commission received multiple comments opposed to the amendments because they felt channeling the motorized vessels to one side of the river would make congestion worse.

Response 2: The amendments are not restricting motorized access. Motorized boats are still able to be on the river but must operate at a no wake speed within the newly designated no wake zone. Also, a portion of the no wake zone is shallow and traditionally does not accommodate motorized boat use. Therefore, the commission does not foresee this amendment creating an increase in congestion of boats.

Comment 3: The commission received multiple comments stating this amendment was unnecessary because it is not just wakes that cause erosion and this amendment will not prevent erosion to the concerned landowners' property.

Response 3: This portion of the river is used by multiple users and the original rule was adopted in 1983 to address multiple use. The commission adopted the no wake zone to address the multiple use without eliminating motorized use as the original use intended.

Comment 4: The commission received a few comments mistakenly believing that the no wake zone extended to the Sun River and other areas of the Missouri River.

Response 4: For clarification, the no wake zone established in ARM 12.11.630, is 200 feet from the western shore from the Warden Bridge on 10th Avenue to the Burlington Northern Railway Bridge No. 119.4 and is only in effect from May 1 to September 30.

/s/ Aimee Hawkaluk

Aimee Hawkaluk

Rule Reviewer

Department of Fish, Wildlife and Parks

/s/ Dan Vermillion

Dan Vermillion

Chair

Fish and Wildlife Commission

Certified to the Secretary of State June 26, 2018.

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

In the matter of the adoption of an        ) NOTICE OF ADOPTION OF AN  
emergency rule closing the Medicine        ) EMERGENCY RULE  
River Fishing Access Site in Cascade        )  
County    )

TO: All Concerned Persons

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

(a) The combination of dangerous conditions includes high water levels, rapidly changing water levels, and flooded roadways that have become unsafe for vehicle and pedestrian travel.

(b) Persons recreating in the flooded portions of the site are at risk of injury or drowning due to unexpected changes to topography obscured by flood waters.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 13 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

3. The emergency rule is effective June 19, 2018, when this rule notice is filed with the Secretary of State.

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

NEW RULE I MEDICINE RIVER FISHING ACCESS SITE EMERGENCY CLOSURE (1) The Medicine River Fishing Access Site is located in Cascade County.

(2) The Medicine River Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule is effective as long as water is flooding the fishing access site.

(4) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the extent and duration of the flooding in the area. Signs closing the fishing access site will be removed when the rule is no longer effective.

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

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

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

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail kgangstad@mt.gov. Any comments must be received no later than August 3, 2018.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Mike Volesky

Mike Volesky

Chief of Operations

Department of Fish, Wildlife and Parks

/s/ Aimee Hawkaluk

Aimee Hawkaluk

Rule Reviewer

Certified to the Secretary of State June 19, 2018.

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

In the matter of the adoption of an            ) NOTICE OF ADOPTION OF AN  
emergency rule closing the Fort Shaw        ) EMERGENCY RULE  
Fishing Access Site in Cascade                )  
County    )

TO: All Concerned Persons

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

(a) The combination of dangerous conditions includes high water levels, rapidly changing water levels, and flooded roadways that have become unsafe for vehicle and pedestrian travel.

(b) Persons recreating in the flooded portions of the site are at risk of injury or drowning due to unexpected changes to topography obscured by flood waters.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 13 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

3. The emergency rule is effective June 19, 2018, when this rule notice is filed with the Secretary of State.

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

NEW RULE I FORT SHAW FISHING ACCESS SITE EMERGENCY  
CLOSURE (1) The Fort Shaw Fishing Access Site is located in Cascade County.

(2) The Fort Shaw Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule is effective as long as water is flooding the fishing access site.

(4) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the



extent and duration of the flooding in the area. Signs closing the fishing access site will be removed when the rule is no longer effective.

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

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

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

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail kgangstad@mt.gov. Any comments must be received no later than August 3, 2018.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Mike Volesky

Mike Volesky

Chief of Operations

Department of Fish, Wildlife and Parks

/s/ Aimee Hawkaluk

Aimee Hawkaluk

Rule Reviewer

Certified to the Secretary of State June 19, 2018.

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

In the matter of the adoption of an                    ) NOTICE OF ADOPTION OF AN  
emergency rule closing the Willow                    ) EMERGENCY RULE  
Creek Reservoir Fishing Access Site                )  
in Lewis and Clark County                            )

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Willow Creek Reservoir Fishing Access Site:

(a) The combination of dangerous conditions includes high water levels, rapidly changing water levels, and flooded roadways that have become unsafe for vehicle and pedestrian travel.

(b) Persons recreating in the flooded portions of the site are at risk of injury or drowning due to unexpected changes to topography obscured by flood waters.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 13 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

3. The emergency rule is effective June 21, 2018, when this rule notice is filed with the Secretary of State.

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

NEW RULE I WILLOW CREEK RESERVOIR FISHING ACCESS SITE  
EMERGENCY CLOSURE (1) The Willow Creek Reservoir Fishing Access Site is located in Lewis and Clark County.

(2) The Willow Creek Reservoir Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule is effective as long as water is flooding the fishing access site.

(4) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the extent and duration of the flooding in the area. Signs closing the fishing access site will be removed when the rule is no longer effective.

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

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

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

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail kgangstad@mt.gov. Any comments must be received no later than August 3, 2018.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Mike Volesky

Mike Volesky

Chief of Operations

Department of Fish, Wildlife and Parks

/s/ Zach Zipfel

Zach Zipfel

Rule Reviewer

Certified to the Secretary of State June 21, 2018.

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

In the matter of the adoption of an        )  
emergency rule closing the Big Bend        )  
Fishing Access Site in Cascade            )  
County    )

NOTICE OF ADOPTION OF AN  
EMERGENCY RULE

TO: All Concerned Persons

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

(a) The Cascade County Emergency Services Incident Command requested Montana Department of Fish, Wildlife and Parks close the above-listed site due to risk to public health and human safety caused by flooding due to high river flows. The combination of dangerous conditions includes high water levels, rapidly changing water levels, and flooded roadways that have become unsafe for vehicle and pedestrian travel.

(b) Persons recreating in the flooded portions of the site are at risk of injury or drowning due to unexpected changes to topography obscured by flood waters.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 13 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The emergency rule is effective June 21, 2018, when this rule notice is filed with the Secretary of State.

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

NEW RULE I BIG BEND FISHING ACCESS SITE EMERGENCY CLOSURE

(1) The Big Bend Fishing Access Site is located in Cascade County.

(2) The Big Bend Fishing Access Site is closed to all public occupation and recreation as signed.

- (3) This rule is effective as long as water is flooding the fishing access site.
- (4) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the extent and duration of the flooding in the area. Signs closing the fishing access site will be removed when the rule is no longer effective.

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

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

5. The rationale for the emergency rule is as set forth in paragraph 1.
6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail kgangstad@mt.gov. Any comments must be received no later than August 3, 2018.
7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.
8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Mike Volesky

Mike Volesky  
Chief of Operations  
Department of Fish, Wildlife and Parks

/s/ Zach Zipfel

Zach Zipfel  
Rule Reviewer

Certified to the Secretary of State June 21, 2018.

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

In the matter of the adoption of an	)	NOTICE OF ADOPTION OF AN
emergency rule closing the	)	EMERGENCY RULE
Cottonwood Grove Fishing Access	)	
Site in Cascade County	)	

TO: All Concerned Persons

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

(a) The Cascade County Emergency Services Incident Command requested Montana Department of Fish, Wildlife and Parks close the above-listed site due to risk to public health and human safety caused by flooding due to high river flows. The combination of dangerous conditions includes high water levels, rapidly changing water levels, and flooded roadways that have become unsafe for vehicle and pedestrian travel.

(b) Persons recreating in the flooded portions of the site are at risk of injury or drowning due to unexpected changes to topography obscured by flood waters.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 13 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The emergency rule is effective June 21, 2018, when this rule notice is filed with the Secretary of State.

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

NEW RULE I COTTONWOOD GROVE FISHING ACCESS SITE  
EMERGENCY CLOSURE (1) The Cottonwood Grove Fishing Access Site is located in Cascade County.

(2) The Cottonwood Grove Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule is effective as long as water is flooding the fishing access site.

(4) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the extent and duration of the flooding in the area. Signs closing the fishing access site will be removed when the rule is no longer effective.

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

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

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

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail kgangstad@mt.gov. Any comments must be received no later than August 3, 2018.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Mike Volesky

Mike Volesky

Chief of Operations

Department of Fish, Wildlife and Parks

/s/ Zach Zipfel

Zach Zipfel

Rule Reviewer

Certified to the Secretary of State June 21, 2018.

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

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

TO: All Concerned Persons

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

(a) The Cascade County Emergency Services Incident Command requested Montana Department of Fish, Wildlife and Parks close the above-listed site due to risk to public health and human safety caused by flooding due to high river flows. The combination of dangerous conditions includes high water levels, rapidly changing water levels, and flooded roadways that have become unsafe for vehicle and pedestrian travel.

(b) Persons recreating in the flooded portions of the site are at risk of injury or drowning due to unexpected changes to topography obscured by flood waters.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 13 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The emergency rule is effective June 21, 2018, when this rule notice is filed with the Secretary of State.

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

NEW RULE I ULM BRIDGE FISHING ACCESS SITE EMERGENCY

CLOSURE (1) The Ulm Bridge Fishing Access Site is located in Cascade County.

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



- (3) This rule is effective as long as water is flooding the fishing access site.
- (4) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the extent and duration of the flooding in the area. Signs closing the fishing access site will be removed when the rule is no longer effective.

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

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

5. The rationale for the emergency rule is as set forth in paragraph 1.
6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail kgangstad@mt.gov. Any comments must be received no later than August 3, 2018.
7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.
8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Mike Volesky

Mike Volesky

Chief of Operations

Department of Fish, Wildlife and Parks

/s/ Zach Zipfel

Zach Zipfel

Rule Reviewer

Certified to the Secretary of State June 21, 2018.

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

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

TO: All Concerned Persons

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

(a) The Cascade County Emergency Services Incident Command requested Montana Department of Fish, Wildlife and Parks close the above-listed site due to risk to public health and human safety caused by flooding due to high river flows. The combination of dangerous conditions includes high water levels, rapidly changing water levels, and flooded roadways that have become unsafe for vehicle and pedestrian travel.

(b) Persons recreating in the flooded portions of the site are at risk of injury or drowning due to unexpected changes to topography obscured by flood waters.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 13 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The emergency rule is effective June 21, 2018, when this rule notice is filed with the Secretary of State.

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

NEW RULE I TRULY BRIDGE FISHING ACCESS SITE EMERGENCY CLOSURE (1) The Truly Bridge Fishing Access Site is located in Cascade County.

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

- (3) This rule is effective as long as water is flooding the fishing access site.
- (4) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the extent and duration of the flooding in the area. Signs closing the fishing access site will be removed when the rule is no longer effective.

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

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

5. The rationale for the emergency rule is as set forth in paragraph 1.
6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail kgangstad@mt.gov. Any comments must be received no later than August 3, 2018.
7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.
8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Mike Volesky

Mike Volesky

Chief of Operations

Department of Fish, Wildlife and Parks

/s/ Zach Zipfel

Zach Zipfel

Rule Reviewer

Certified to the Secretary of State June 21, 2018.

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

In the matter of the adoption of an            ) NOTICE OF ADOPTION OF AN  
emergency rule closing the Largent's        ) EMERGENCY RULE  
Bend Fishing Access Site in Cascade        )  
County    )

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Largent's Bend Fishing Access Site:

(a) The Cascade County Emergency Services Incident Command requested Montana Department of Fish, Wildlife and Parks close the above-listed site due to risk to public health and human safety caused by flooding due to high river flows. The combination of dangerous conditions includes high water levels, rapidly changing water levels, and flooded roadways that have become unsafe for vehicle and pedestrian travel.

(b) Persons recreating in the flooded portions of the site are at risk of injury or drowning due to unexpected changes to topography obscured by flood waters.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 13 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The emergency rule is effective June 21, 2018, when this rule notice is filed with the Secretary of State.

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

NEW RULE I LARGENT'S BEND FISHING ACCESS SITE EMERGENCY CLOSURE (1) The Largent's Bend Fishing Access Site is located in Cascade County.

(2) The Largent's Bend Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule is effective as long as water is flooding the fishing access site.

(4) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the extent and duration of the flooding in the area. Signs closing the fishing access site will be removed when the rule is no longer effective.

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

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

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

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail kgangstad@mt.gov. Any comments must be received no later than August 3, 2018.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Mike Volesky

Mike Volesky

Chief of Operations

Department of Fish, Wildlife and Parks

/s/ Zach Zipfel

Zach Zipfel

Rule Reviewer

Certified to the Secretary of State June 21, 2018.

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

In the matter of the adoption of an                    ) NOTICE OF ADOPTION OF AN  
emergency rule closing the Sun River            ) EMERGENCY RULE  
Wildlife Management Area in Lewis            )  
and Clark County                                    )

TO: All Concerned Persons

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

(a) The combination of dangerous conditions includes high water levels and flooded roadways that have become unsafe for vehicle and pedestrian travel.

(b) Persons recreating in the flooded portions of the site are at risk of injury or drowning due to unexpected changes to topography obscured by flood waters.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 13 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

3. The emergency rule is effective June 22, 2018, when this rule notice is filed with the Secretary of State.

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

NEW RULE I SUN RIVER WILDLIFE MANAGEMENT AREA EMERGENCY CLOSURE (1) The Sun River Wildlife Management Area is located in Lewis and Clark County.

(2) The Sun River Wildlife Management Area is closed to all public occupation and recreation as signed.

(3) This rule is effective as long as water is flooding the wildlife management area.

(4) This rule will expire as soon as the department determines the wildlife management area is again safe for occupation and recreation. This will depend on the extent and duration of the flooding in the area. Signs closing the wildlife management area will be removed when the rule is no longer effective.

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

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

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

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail kgangstad@mt.gov. Any comments must be received no later than August 3, 2018.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Mike Volesky

Mike Volesky

Chief of Operations

Department of Fish, Wildlife and Parks

/s/ Rebecca Dockter

Rebecca Dockter

Rule Reviewer

Certified to the Secretary of State June 22, 2018.

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

In the matter of the adoption of an                    ) NOTICE OF ADOPTION OF AN  
emergency rule closing a portion of                ) EMERGENCY RULE  
the Swan River in Lake County                    )

TO: All Concerned Persons

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

(a) The Montana Highway 209 bridge on the Swan River near Ferndale is under construction and a temporary bridge currently exists.

(b) The temporary bridge has unique abutments that, combined with high-water levels, are catching debris and creating swirling waves.

(c) Several accidents have already occurred under the bridge. With the peak water recreation season approaching, the department believes that more accidents and capsizing are likely to occur under the temporary bridge. Previous attempts at mitigating hazards, including news releases, social media notifications, signage, and navigational buoys, have proven ineffective.

(d) Persons recreating under the bridge are at risk of injury or drowning due to the dangerous conditions created by the temporary bridge.

(e) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 13 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The emergency rule is effective June 29, 2018, when this rule notice is filed with the Secretary of State.

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

NEW RULE I SWAN RIVER EMERGENCY CLOSURE (1) A portion of the Swan River is located in Lake County.



(2) The Swan River is closed to all floating, boating, swimming, and wading from the Swan River Fishing Access Site to the Montana Highway 209 Bridge in Ferndale. Fishing from the shore is permitted.

(3) This rule is effective as long as the temporary bridge is creating a hazardous and dangerous situation.

(4) This rule will expire as soon as the department determines the area is again safe for occupation and recreation. This will depend on the high-water flows and progress on the bridge construction. Signs closing the river will be removed when the rule is no longer effective.

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

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

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

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail kgangstad@mt.gov. Any comments must be received no later than August 3, 2018.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Dustin Temple

Dustin Temple

Chief of Administration

Department of Fish, Wildlife and Parks

/s/ Zach Zipfel

Zach Zipfel

Rule Reviewer

Certified to the Secretary of State June 29, 2018.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 18.8.1502, 18.8.1503, and        )  
18.8.1505 pertaining to Motor Carrier    )  
Services Safety Requirements        )

TO: All Concerned Persons

1. On May 25, 2018, the Department of Transportation published MAR Notice No. 18-169 pertaining to the proposed amendment of the above-stated rules at page 1007 of the 2018 Montana Administrative Register, Issue Number 10.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

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

Certified to the Secretary of State June 26, 2018.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 18.7.202 and 18.7.206 )  
pertaining to Right-of-Way )  
Occupancy by Water and Sewer )  
Facilities )

TO: All Concerned Persons

1. On May 11, 2018, the Department of Transportation published MAR Notice No. 18-170 pertaining to the proposed amendment of the above-stated rules at page 920 of the 2018 Montana Administrative Register, Issue Number 9.

2. The department has amended ARM 18.7.202 and 18.7.206 as proposed.

3. The department received one comment. A summary of the comment received and the department's response is as follows:

COMMENT #1: One comment was received in support of the proposed rule amendments.

RESPONSE #1: MDT acknowledges receipt of the comment in support, and appreciates public participation in the rulemaking process.

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

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

Certified to the Secretary of State June 26, 2018.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.138.407 Functions for Dental	)	ADOPTION
Hygienists, 24.138.425 Limited Access	)	
Permit Treatment Guidelines –	)	
Practicing Under Public Health	)	
Supervision, 24.138.509 Dental	)	
Hygiene Limited Access Permit,	)	
24.138.2102 Subject Matter	)	
Acceptable for Dentist and Dental	)	
Hygienist Continuing Education,	)	
24.138.2104 Requirements and	)	
Restrictions, and the adoption of New	)	
Rule I Limited Prescriptive Authority –	)	
Qualifications – Allowable Percentages	)	
of Topical Agents	)	

TO: All Concerned Persons

1. On February 23, 2018, the Board of Dentistry (board) published MAR Notice No. 24-138-74 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 386 of the 2018 Montana Administrative Register, Issue No. 4.

2. On March 16, 2018, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the March 23, 2018, deadline.

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

COMMENT 1: Several commenters requested the board amend NEW RULE I to increase the allowable percentage of fluoride products from 5% to 6% to allow dental hygienists to prescribe silver diamine fluoride (SDF). The commenters asserted there is little difference between 5% fluoride varnish and SDF, and that research supports the placement of SDF as a safe, effective, and inexpensive way to manage dental caries.

RESPONSE 1: While the board appreciates all comments received during rulemaking, the board is unable to make the suggested change at this time. Increasing the percentage in the final notice would not allow the public to provide comment and therefore exceeds the scope of this rulemaking project.

4. The board has amended ARM 24.138.407, 24.138.425, 24.138.509, 24.138.2102, and 24.138.2104 exactly as proposed.

5. The board has adopted NEW RULE I (24.138.419) exactly as proposed.

BOARD OF DENTISTRY  
GEORGE JOHNSTON, DDS  
PRESIDENT

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

/s/ GALEN HOLLENBAUGH  
Galen Hollenbaugh, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 26, 2018.

BEFORE THE BOARD OF VETERINARY MEDICINE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.225.301 definitions,	)	TRANSFER, AND REPEAL
24.225.425 nonroutine applications,	)	
24.225.501 temporary permits,	)	
24.225.503 veterinarian licenses,	)	
24.225.504 veterinarian examinations,	)	
24.225.507 licensure of out-of-state	)	
veterinarians, 24.225.511 continuing	)	
education, and 24.225.513 continuing	)	
education instructors; the transfer of	)	
24.225.410 (24.225.514) record-	)	
keeping standards, 24.225.415	)	
(24.225.520) management of	)	
infectious wastes, and 24.225.420	)	
(24.225.521) inspection and	)	
sanitation; and the repeal of	)	
24.225.502 occasional case	)	
exemption	)	

TO: All Concerned Persons

1. On April 27, 2018, the Board of Veterinary Medicine published MAR Notice No. 24-225-40 regarding the public hearing on the proposed amendment, transfer, and repeal of the above-stated rules, at page 774 of the 2018 Montana Administrative Register, Issue No. 8.

2. On May 22, 2018, a public hearing was held on the proposed amendment, transfer, and repeal of the above-stated rules in Helena. Several comments were received by the May 25, 2018, deadline.

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

COMMENT 1: The proposed title for ARM 24.225.503 is "Veterinarian Licenses." This rule describes the license application requirements for veterinarians who are not currently licensed in another jurisdiction. The proposed title for ARM 24.225.507 is "Licensure of Out-of-State Veterinarians" and describes the license application requirements for veterinarians who are currently licensed out-of-state. The title of ARM 24.225.503 could mislead applicants to believe this rule applies to all veterinarian applicants. The commenter recommended the board amend the titles to avoid confusion.

RESPONSE 1: The board agrees with the comment and is amending the rules accordingly.

COMMENT 2: Multiple commenters expressed support for the proposed rule changes.

RESPONSE 2: The board appreciates all comments received during the rulemaking process.

4. The board has amended ARM 24.225.301, 24.225.425, 24.225.501, 24.225.504, 24.225.511, and 24.225.513 as proposed.

5. The board has transferred ARM 24.225.410 (24.225.514), 24.225.415 (24.225.520), and 24.225.420 (24.225.521) as proposed.

6. The board has repealed ARM 24.225.502 as proposed.

7. The board has amended ARM 24.225.503 and 24.225.507 with the following changes, stricken matter interlined, new matter underlined:

24.225.503 VETERINARIAN LICENSES LICENSE REQUIREMENTS – ORIGINAL APPLICANTS (1) through (4) remain as proposed.

24.225.507 ~~LICENSURE OF VETERINARIAN LICENSE REQUIREMENTS – OUT-OF-STATE VETERINARIANS APPLICANTS~~ (1) through (3) remain as proposed.

BOARD OF VETERINARY MEDICINE  
REBECCA MATTIX, DVM, PRESIDENT

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

/s/ GALEN HOLLENBAUGH  
Galen Hollenbaugh, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 26, 2018.

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

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION AND
RULES I and II, and amendment of	)	AMENDMENT
ARM 37.80.101, 37.80.102,	)	
37.80.201, 37.80.205, 37.80.206,	)	
37.80.301, 37.80.316, 37.80.501, and	)	
37.80.502 pertaining to the Child	)	
Care Assistance Program's	)	
implementation of amendments to the	)	
Child Care and Development Block	)	
Grant Act and Final Rules at 45 CFR	)	
Part 98	)	

TO: All Concerned Persons

1. On April 13, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-837 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 690 of the 2018 Montana Administrative Register, Issue Number 7.

2. The department has adopted the following rule as proposed: New Rule II (37.80.208). The department has amended the following rules as proposed: ARM 37.80.101, 37.80.102, 37.80.201, 37.80.205, 37.80.206, 37.80.301, 37.80.316, 37.80.501, and 37.80.502.

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

NEW RULE I (37.80.207) BEST BEGINNINGS CHILD CARE  
SCHOLARSHIP PRESCHOOL (1) The Best Beginnings Child Care Scholarship will not reimburse child care services during preschool program hours at any of the following settings:

- (a) public ~~or~~ preschool settings, ~~as defined~~ described in ARM 10.63.101;
- (b) through (2) remain as proposed.

AUTH: 53-4-212, MCA  
IMP: 52-2-713, 53-4-611, MCA

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: A commenter stated the word "public" in New Rule I was confusing too many child care providers because providers view themselves as "public."

RESPONSE #1: In New Rule I, the department references "public preschool" as a program that is established under ARM 10.63.101. A preschool program that receives state or federal funding for preschool is not eligible for reimbursement during preschool program hours. To clarify the rule's intent, the department is revising New Rule I(1)(a) to remove the word "or" after "public" and changing the nature of the cross-reference regarding ARM 10.63.101, which describes public preschools.

COMMENT #2: Two commenters asked the department to consider allowing Montana preschool development grant and licensed Head Start facilities to be permitted to receive the Best Beginnings Child Care Scholarship (BBCCS) during operating preschool hours.

RESPONSE #2: These preschool programs may receive both federal and state funds to support the preschool hours. The department has determined that BBCCS will not provide additional support to the preschool program for the hours in the day already receiving public funding for preschool.

COMMENT #3: A commenter stated Family, Friend, and Neighbors (FFNs) should not be included in child care referral services.

RESPONSE #3: The department believes both families and FFNs will benefit from FFNs being part of child care referral services. FFNs are registered child care providers who receive annual training and inspections and meet health and safety standards. FFNs will offer parents more options for child care providers on a child care referral list.

COMMENT #4: A commenter suggested a child care reimbursement rate could be set as a percentage of the provider fee with the family paying the difference because areas such as Bozeman and Big Sky have a higher cost of living.

RESPONSE #4: The department used the 2016 Montana Child Care Market Rate Survey (Survey) to develop child care payment rules. The Survey polled child care providers across Montana and asked what providers charge for care of children by age and attendance. The Final Rules at 45 CFR Part 98 (Final Rules) require payment rates be set "in accordance with the results of the most recent market rate survey." The Survey also recommends one statewide rate, and the department followed this recommendation.

COMMENT #5: Two commenters stated a statewide reimbursement rate would be punitive to parents that live in an area where child care providers charge a rate lower than the statewide reimbursement rate. These providers will set their rates based on what the statewide reimbursement rate is and be a burden to private-pay families.

RESPONSE #5: Child care providers are business owners and can set their fees for child care as they see fit and appropriate to support their business. The department is responsible for setting child care reimbursement rates statewide for reimbursement of subsidized child care. The Survey polled child care providers across the state. The data is statistically valid and reliable, which is also a requirement of any market rate study per the Final Rules. The Child Care Policy Manual (Manual), in Policy Section 1-4: Scholarship Rates, "Best Beginnings Child Care Scholarship payments are made at a rate determined by the ECSB through a market rate survey, or at a provider's rate, whichever is lower." Child care providers may not charge the state a higher rate than they charge the public.

COMMENT #6: A commenter stated the sliding fee scale could be adjusted to have smaller steps to allow for more parents to qualify and have a lower copayment. This would especially be helpful for single parent households.

RESPONSE #6: The department did not propose a revision to the sliding fee scale in this rulemaking. The department does not intend to change the current sliding fee scale at this time due to fiscal restraints.

COMMENT #7: A commenter asked if a licensed child care center with a preschool serving two and three-year-old children would be eligible for the BBCCS.

RESPONSE #7: A licensed child care center serving two and three-year olds is eligible to receive the BBCCS as long as the facility continues to meet the BBCCS requirements. New Rule I applies to preschool program hours. "Preschool" is defined in ARM 37.80.102 as "an educational program or school environment targeted to children at age four and up to kindergarten age." New Rule I does not apply to two and three-year olds.

COMMENT #8: A commenter asked about differences between ARM Title 37, chapters 80 and 95 in the following areas: child-to-staff ratios, age ranges, and preschool child age.

RESPONSE #8: The rule chapters referenced apply to two different functions of the department. Chapter 80 applies only to children receiving the BBCCS and child care providers serving children receiving the BBCCS, and age ranges including preschool-aged children are for payment purposes only. Chapter 95 applies to all child care providers licensed or registered to provide child care services by the department's Quality Assurance Division, Child Care Licensing Program.

COMMENT #9: A commenter asked what payment rates would be used: hourly rates, half-time day rate, or full-time day rate.

RESPONSE #9: The department will use a payment rate of a half-time day and full-time day rate to reimburse the BBCCS.

COMMENT #10: A commenter asked about the removal of "Absent Days" from the Manual.

RESPONSE #10: The department is removing the definition for "Absent Days" from the Manual because it is provided in ARM 37.80.102, and its removal from the Manual will reduce confusion over terminology.

COMMENT #11: A commenter stated there is a shortage of infant/toddler slots due to the child-to-staff ratio and associated cost. The commenter stated an increase in either the reimbursement rate or child-to-staff ratio would help increase access and affordability for infants/toddlers.

RESPONSE #11: The department is required to uphold the child-to staff ratio rule found in ARM 37.95.623. The department is changing the age range for "infant/toddler" from birth to a child's second birthday to birth through the end of the 35th month. The department believes that by extending the age range for infant/toddlers, an increase in access and affordability for infant care will occur because a higher rate of reimbursement for the BBCCS will be paid.

COMMENT #12: A commenter stated that changing the age range from an "infant" to an "infant/toddler" will cause more providers to accept younger children. This will cause child care providers to be burdened. A higher reimbursement rate for three-year olds, instead of two-year olds, will decrease affordability.

RESPONSE #12: The department intends for the change in age range for "infant/toddler" to be a positive action for both families, children, and child care providers due to the increased reimbursement rate for the BBCCS for this age group.

COMMENT #13: A commenter supported the proposed "infant/toddler" definition because it would benefit child care providers who care for young children.

RESPONSE #13: The department thanks the commenter for the comment and agrees with the comment.

COMMENT #14: A commenter stated child care providers may have to raise their rates because the department is revising its reimbursement rates. If a child care provider raises their rates, this may be a burden to families.

RESPONSE #14: The department does not intend for child care providers to have to raise their rates. Child care businesses determine their rates based on their business needs. Reimbursement rates were determined using information from the Survey. Child care providers were asked what they charge private-pay families. Reimbursement rates were set based on the child care providers' responses.

COMMENT #15: A commenter supported the use of half and full-day rates because it will be easier for child care providers when submitting monthly invoices.

RESPONSE #15: The department thanks the commenter for the comment and agrees with the comment.

COMMENT #16: A commenter supported the department reimbursing for registration fees for children receiving the BBCCS and the requirement that the reimbursed registration fee must also be charged to all families enrolled with a child care provider.

RESPONSE #16: The department thanks the commenter for the comment and agrees with the comment.

COMMENT #17: A commenter requested the registration fee be increased to any amount up to \$75.00.

RESPONSE #17: The department used data from the Survey, fiscal analysis, and fiscal impact data to determine a reasonable registration fee reimbursement amount. The department does not intend to change the registration fee limit at this time due to fiscal restraints.

COMMENT #18: A commenter stated the sliding fee scale should be increased so a parent earning above 150% of the federal poverty guidelines would be eligible for the BBCCS.

RESPONSE #18: The department did not propose a revision to the sliding fee scale in this rulemaking. The department does not intend to change the current sliding fee scale at this time due to fiscal restraints.

5. The department intends to apply the adoption of New Rule I (37.80.207), New Rule II (37.80.208), and the amendments to ARM 37.80.101, 37.80.102, 37.80.201, 37.80.206, 37.80.301, 37.80.316, 37.80.501, and 37.80.502 effective July 7, 2018. The department intends to apply the amendments to ARM 37.80.205 effective September 28, 2018.

/s/ Geralyn Driscoll  
Geralyn Driscoll  
Rule Reviewer

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

Certified to the Secretary of State June 26, 2018.

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 37.40.815 and 37.40.830 )  
pertaining to hospice reimbursement )  
and updates )

TO: All Concerned Persons

1. On May 11, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-842 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 960 of the 2018 Montana Administrative Register, Issue Number 9.

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

3. No comments or testimony were received.

4. The department intends to apply the increases in hospice rates in this rule amendment retroactively to October 1, 2017. Decreases in hospice rates will not be applied retroactively and will be effective upon adoption of rule. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

/s/ Francis X. Clinch  
Francis X. Clinch  
Rule Reviewer

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

Certified to the Secretary of State June 26, 2018.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 38.5.2501, 38.5.2527, and )  
38.5.2528, pertaining to small water )  
utility rules )

TO: All Concerned Persons

1. On January 26, 2018, the Department of Public Service Regulation published MAR Notice No. 38-5-239 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 166 of the 2018 Montana Administrative Register, Issue Number 2.

2. The department has chosen to adopt Rule Amendment Option 2.

3. The department has amended the following rules as proposed in Rule Amendment Option 2, but with the following changes from the original proposal, new matter underlined, deleted matter interlined.

38.5.2501 GENERAL RULES FOR PRIVATELY OWNED WATER UTILITIES (1) and (2) remain as proposed.

(3) All privately owned water utilities must have commission-approved tariffs filed with the commission, pursuant to Title 69, MCA, and its corresponding administrative rules, including penalties as provided by statute. ~~The commission will prioritize supervision of management and rate regulation of privately owned water utilities based upon complaints received from consumers.~~

(4) All privately owned water utilities must file a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., or in accordance with the simplified regulatory treatment options rules of ARM 38.5.2527.

(5) As good cause appears and as justice may require, a utility may petition the commission to waive the application of any rule, pursuant to ARM 38.2.305.

(6) Nothing contained in these rules shall be construed to limit the statutory and constitutional authority of the Montana Consumer Counsel to participate and represent the interests of the utility ratepayers in these proceedings.

38.5.2527 SIMPLIFIED REGULATORY TREATMENT OPTIONS (1) ~~Three~~ Two simplified regulatory treatment options are available to a small water or sewer utility that allow it to propose changes to its rates by a method other than filing a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq. Option (b) is only available to establish a utility's initial tariff rates with the commission; a utility that has previously had rates on file with the commission is not eligible for this rate. The options are:

~~(a) filing a rate application for the adoption of the commission-approved standard rate tariff in accordance with the minimum filing requirements described in ARM 38.5.2528; or~~

~~(ba) filing an operating ratio rate application in accordance with the operating ratio methodology as described in ARM 38.5.2529; or~~

~~(eb) filing a standard rate application requesting adoption of the Montana Department of Natural Resources and Conservation's most recent water and sewer rate study's monthly water average and/or monthly wastewater average for populations less than 500.~~

(2) remains as proposed.

(3) If a utility's election of either of the ~~three~~ two simplified regulatory options described in ARM 38.5.2527(1)(a) or (1)(b) would result in increased rates to customers, it may request, or the commission may require the utility to implement the rates in increments over a reasonable time period.

~~(4) An existing small water or sewer utility must be in compliance with 69-3-203, MCA (annual report requirement), in order to elect either of the simplified regulatory treatment options or to request authorization for a reserve account as provided in ARM 38.5.2531. A simplified regulatory treatment option rate application shall contain, at a minimum, the following information:~~

~~(a) The full legal name and title of the owner of the utility, its principal place of business and mailing address, the date that it began providing service to customers, and contact information (i.e., name, address, telephone number and email) of the individual(s) representing the utility before the commission;~~

~~(b) A detailed description of the utility system and its potential for expansion, including the number of wells, feet of main, and filtration system;~~

~~(c) The total number of existing water service connections and meters and existing sewer service connections and meters, and the billing frequency for each type of service;~~

~~(d) The total number of potential water service connections and meters and potential sewer service connections and meters;~~

~~(e) The number of existing and potential multi-residence dwellings (e.g., apartments or condos) served by a single service connection or meter, and the number of units in each multi-residence dwelling;~~

~~(f) The current rates being charged for each type of service, when the current rates went into effect, and whether the current rates have been approved by the commission;~~

~~(g) The rates proposed for each type of service;~~

~~(h) If known, the date that utility assets were first placed in service, the date of any sales or transfers that have occurred since utility assets were first placed in service, and the full legal name and title of any previous owner(s);~~

~~(i) In the event that the utility is not a new utility, two years of income statements and balance sheets, separately for water and sewer utilities, indicating how these statements were prepared (i.e., cash basis or accrual basis) and who prepared them;~~

~~(j) In the event that the utility is not a new utility, a list of any revenue generated during the two years referenced in (i) from sources other than the rates charged to customers, including the source and amount of revenue;~~

(k) In the event that a utility is not a new utility, a list of each transaction that occurred with an affiliate or related party during the two years referenced, involving more than \$750, the amount paid, service(s) provided, and counterparty;

(l) If a utility is requesting the standard rate tariff, it must file an annual report with the commission; if the utility is requesting the operating ratio tariff, it must file a copy of each annual report for the last three calendar years;

(m) Copies of any water rights owned or leased by the utility, percentage usage of the available water right, and any documentation from the Department of Natural Resources and Conservation involving water right usage or violations;

(n) An affidavit from an owner or manager of the utility attesting to the accuracy of the information provided;

(o) The original cost of utility plant in service, an accounting of any capital improvements made, the amount of depreciation that has been taken on plant in service, and the depreciation schedule(s) used for the different utility asset accounts; and

(p) A complete copy of the information regarding the utility's financial capacity that the utility provided to the Montana Department of Environmental Quality as part of that agency's public water system review process.

(5) The commission may find good cause to waive any privately owned water utility rules, if the utility successfully petitions the commission for a waiver of rules pursuant to ARM 38.2.305. Minimum filing requirement forms are available from the commission upon request or on the commission's web site at [www.psc.mt.gov](http://www.psc.mt.gov).

(6) The commission will determine whether a simplified regulatory treatment option application satisfies the minimum filing requirements in (4)(a) through (p) of this rule, no later than 30 days after it is received by the commission. If the commission determines that the rate application satisfies the minimum filing requirements, it will notice the public for comment or protest.

(7) The commission may deny a rate application requesting simplified regulatory treatment or only grant it in part if the commission determines, based on comments or protest that it would be unjust or unreasonable to allow simplified regulatory treatment or approve the rates proposed by the utility.

(8) A small water or sewer utility's simplified regulatory treatment tariffs may be revoked if the utility is not in compliance with the commission's annual report requirement.

38.5.2528 STANDARD RATE TARIFF (1) A small water or sewer utility may file an application to establish its initial commission-approved standard rates for small water or sewer utilities or by adopting its own rates if they are lower than the applicable standard rates. If the utility has previously had rates on file with the commission it is not eligible for initial standard rates. The standard rate application and tariff forms to be submitted for commission review are available from the commission upon request or by obtaining them from the commission's web site at [www.psc.mt.gov](http://www.psc.mt.gov). ~~The rate application shall contain, at a minimum, the following information:~~

~~(a) The full legal name and title of the owner of the utility, its principal place of business and mailing address, the date that it began providing service to customers,~~



and contact information (i.e., name, address, telephone number and email) of the individual(s) representing the utility before the commission;

~~(b) A detailed description of the utility system and its potential for expansion, including the number of wells, feet of main, and filtration system;~~

~~(c) The total number of existing water service connections and meters and existing sewer service connections and meters, and the billing frequency for each type of service;~~

~~(d) The total number of potential water service connections and meters and potential sewer service connections and meters;~~

~~(e) The number of existing and potential multi-residence dwellings (e.g., apartments or condos) served by a single service connection or meter, and the number of units in each multi-residence dwelling;~~

~~(f) The current rates being charged for each type of service, when the current rates went into effect, and whether the current rates have been approved by the commission;~~

~~(g) The rates proposed for each type of service;~~

~~(h) The date that utility assets were first placed in service, the date of any sales or transfers that have occurred since utility assets were first placed in service, and the full legal name and title of any previous owner(s);~~

~~(i) Two years of income statements and balance sheets, separately for water and sewer utilities, indicating how these statements were prepared (i.e., cash basis or accrual basis) and who prepared them;~~

~~(j) A list of any revenue generated during the two years referenced in (i) from sources other than the rates charged to customers, including the source and amount of revenue;~~

~~(k) A list of each transaction that occurred with an affiliate or related party during the two years referenced, involving more than \$750, the amount paid, service(s) provided, and counterparty;~~

~~(l) A copy of the most recent annual report filed with the commission;~~

~~(m) Copies of any water rights owned or leased by the utility, percentage usage of the available water right, and any documentation from the Department of Natural Resources and Conservation involving water right usage or violations; and~~

~~(n) An affidavit from an owner or manager of the utility attesting to the accuracy of the information provided.~~

(2) The standard rates for small water and sewer utilities that apply to establish rates using this simplified regulatory option are: set pursuant to ARM 38.5.2527(1)(b), as calculated by the commission staff.

~~(a) a flat charge of \$50 per connection per month for a water utility that provides water to its customers on an unmetered basis;~~

~~(b) a monthly service charge of \$40 per connection, plus a usage rate of \$2.00 per 1,000 gallons for customer usage in excess of 10,000 gallons, for a small water utility that provides water to its customers on a metered basis;~~

~~(c) a flat charge of \$30 per connection per month for a small sewer utility.~~

(3) remains as proposed.

(4) A Within ten days of filing its application with the commission, a small water or sewer utility that files an standard rate application to adopt the standard rates must notify the commission and every customer in writing of its intention within

ten days of filing its application and file a copy of the customer notification with the commission.

(5) remains as proposed.

~~(6) The notification rate application must include the proposed rates, a copy of the notification provided to customers, and verification that all customers were mailed a notice of the proposed rate change. A small water or sewer utility must, if applicable, include in its rate application a complete copy of the information regarding the utility's financial capacity that the utility provided to the Montana Department of Environmental Quality as part of that agency's public water system review process.~~

~~(67) The commission will determine whether a rate application requesting simplified regulatory treatment satisfies the minimum filing requirements in (1)(a) through (n) no later than 30 days after it is received by the commission. If the commission determines that the rate application satisfies the minimum filing requirements it will notice it to the public for comment or protest. If either the Montana Consumer Counsel or 20 percent of the utility's customers protest the application, the commission will make a decision on the application following any additional process established by the commission.~~

~~(78) A standard rate application tariff approved by the commission expires three calendar years after its initial effective date, unless the commission approves an extension. Extensions will only be granted in limited circumstances. The three-year calendar time period which begins at the time the commission grants any portion of the standard rate, even if the rate is implemented in phases increments pursuant to ARM 38.5.2527(3). Standard rates shall be considered interim or temporary rates subject to rebate or surcharge pending a decision made in a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., a rate application for the adoption of the Montana Department of Natural Resources and Conservation's average rates, or in accordance with the operating ratio methodology pursuant to ARM 38.5.2529. At least three months prior to the expiration of the standard rate tariff, the utility must notify the commission whether it will file a request for an extension of the standard rate tariff option, a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., or an application in accordance with the operating ratio methodology pursuant to ARM 38.5.2529. A utility may request an extension of the standard rate in limited circumstances and for good cause shown, including for an extension of time to allow the utility to meet its annual report requirements under these rules.~~

~~(8) Standard rates shall be considered interim or temporary rates subject to rebate or surcharge pending a decision made in a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq. or in accordance with the operating ratio methodology pursuant to ARM 38.5.2529.~~

~~(9) The commission will not grant standard rates to a small water or sewer utility that has been operating pursuant to commission-approved rates previously. The commission may deny a rate application requesting simplified regulatory treatment or only grant it in part if the commission determines, based on comments or protest, that it would be unjust or unreasonable to allow simplified regulatory treatment or approve the rates proposed by the utility.~~

~~(10) A small water or sewer utility's standard rate tariff may be revoked if the utility is not in compliance with the Commission's annual report requirement.~~

~~(11) Nothing contained in these rules shall be construed to limit the statutory and constitutional authority of the Montana Consumer Counsel to participate and represent the interests of the utility ratepayers in these proceedings.~~

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: One commenter stated that the existing rules should remain in place and the rulemaking proposal should be denied.

RESPONSE 1: The commission disagrees the existing rules should remain in place as some updates are necessary. The commission determines that the rules as proposed in this Notice with amendments are appropriate.

COMMENT 2: One commenter objected to removing the language "establish its rates" and replacing it with "propose changes to its rates," arguing new utilities need to establish new rates.

RESPONSE 2: The Commission appreciates the comment and has changed the language to "that allow it to propose rates by a method other . . ." so the rule applies to brand new, recently acquired, and existing public utilities. Either a newly established utility or one currently operating that is coming into compliance with rate regulation is eligible for simplified regulatory treatment. The majority of the filings by small water utilities are from companies that have been operating for several years and now are coming into compliance.

COMMENT 3: One commenter stated Option 2 is the only viable option for small water utilities. Another commenter stated that Option 2 is preferable to Option 1.

RESPONSE 3: The commission appreciates the comments. The commission has adopted the minimum filing requirements in ARM 38.5.2527 as proposed in Option 2, as well as including current rate information, original cost, and depreciation information.

COMMENT 4: Several commenters objected to prioritizing regulation by number of complaints received. One commenter argued the commission should not proceed with "Option 2" if prioritization of regulation based on complaints is not included in the rule.

RESPONSE 4: The commission appreciates the comments. The commission removed the complaint prioritization provision from the rulemaking.

COMMENT 5: One commenter proposes the commission remove the language "for populations of less than 500" and replace it with "for all communities in Montana."

RESPONSE 5: The commission disagrees with the commenters' request for change in ARM 38.5.2527. The commission's jurisdiction is limited to "small water or sewer utility," defined in ARM 38.5.2526(4) which is not a rule under consideration in this rulemaking. Broadening the scope of the study is unnecessary and inappropriate.

COMMENT 6: Some commenters stated that if a recent DNRC study is not available, the rate shall be established using the last available study and then adjusted for inflation. One commenter suggested this adjustment be based on the Consumer Price Index.

RESPONSE 6: The commission appreciates this comment and has confirmed that the DNRC's Montana Statewide Water and Wastewater Rate Study in ARM 38.5.2528 is updated on a regular basis and offers a sufficient representation of small water and small sewer rates in Montana. An adjustment based on the Consumer Price Index is not necessary.

COMMENT 7: One commenter stated that utilities requesting DNRC rates should not need to meet the simplified filing requirements as identified in ARM 38.5.2528. Another commenter stated the DNRC rates should not have any procedural process, arguing they are "interim" and subject to refund.

RESPONSE 7: The commission disagrees. The simplified regulatory treatment process is not an automatically granted rate and all applicants will be subject to at least a minimum review. Receipt of the ARM 38.5.2527 minimum filing requirements upon application ensures the commission is able to review the application in an efficient and thorough manner.

COMMENT 8: One commenter proposes the DNRC rates replace the existing Standard Rates and include the consumer protections for standard rates.

RESPONSE 8: The commission agrees and has established that standard rates are determined by the most recent DNRC study, see ARM 38.5.2527, and has retained consumer protections in the standard rate rules in ARM 38.5.2528.

COMMENT 9: One commenter proposes that the DNRC rates be limited to a period of three years with no possibility for extension.

RESPONSE 9: The commission disagrees. Although the intention of ARM 38.5.2528 is to allow standard rates for only three years, the commission has created the flexibility to allow for rare instances where a limited extension may be warranted, upon commission approval.

COMMENT 10: One commenter stated that the PSC should petition the Legislature to put DNRC rates into statute as "just and reasonable."

RESPONSE 10: The commission disagrees as a "just and reasonable" interpretation varies by utility. However, a Legislative interim committee is currently discussing several bill drafts during the interim including one that could place DNRC rates into statute.

COMMENT 11: One commenter recommended amending the rule to allow a utility to submit an Annual Report in lieu of a standard rate application.

RESPONSE 11: The commission disagrees. A standard rate application is not automatically approved. The commission requires an annual report and minimum filing requirements in ARM 38.5.2527 as part of a simplified regulatory process, but all utilities are subject to regulatory review and the just and reasonable standard.

COMMENT 12: One commenter stated a utility should remain eligible for Standard Rates even if they have existing tariffs on file with the PSC.

RESPONSE 12: The commission disagrees. Because the small water and sewer utilities generally have limited financial information prior to regulation and when they first start operating, the best way to establish initial rates is to offer standard rates until complete financial information is available. If a utility has already been operating under tariffs with the commission that complete financial information is already available and rates can be set a cost of service basis.

COMMENT 13: Some commenters stated that the simplified filing requirements are unworkable since a new utility owner will not have records to file, and a new owner of an existing utility may not be familiar with the previous owner's financial books. These commenters propose removing the requirements to: submit information regarding affiliate transactions; system expansion, original cost, dates assets were placed into service, previous owner information, two years of financials, and supplemental revenues. This commenter suggests filing an annual report with the PSC is sufficient.

RESPONSE 13: The commission disagrees. A new owner of an existing utility should have access to the utility's previous financial records and books. If the new owner has some but not all of the minimum filing requirement documents required in ARM 38.5.2527, it may request a waiver of the missing documents as good cause appears or as justice may require per ARM 38.2.305.

COMMENT 14: One commenter stated the rule should include a provision to allow for the recovery of regulatory proceeding expenses.

RESPONSE 14: The commission disagrees. The purpose of the simplified regulatory treatment process is to simplify the process of filing for rates and minimizing the regulatory costs to ratepayers. If the utilities follow the standard rate application rules, the rate filing process will be streamlined. This saves on costs that would otherwise be incurred by the utility and ratepayers. If a utility determines that the ratemaking costs will be materially detrimental to the financial stability of that

utility, it may request recovery of these costs in an application for a general rate case proceeding.

COMMENT 15: The MCC states that the existing standard rates are unlawful and should not be available.

RESPONSE 15: The commission disagrees. However, the commission has adopted the DNRC's rates for small water and small sewer utilities, as analyzed in the DNRC rate study, as a fair representation of rates in Montana and appropriate for standard rates.

COMMENT 16: The MCC proposes amending the simplified filing requirements to require original cost and depreciation "if available."

RESPONSE 16: The commission agrees in part and has included these requirements in ARM 38.5.2527. If the utility does not have this information, it may seek a waiver from the commission of this requirement upon showing pursuant to ARM 38.2.305.

COMMENT 17: One commenter stated the Operating Ratio methodology has not been implemented yet, and should not be included in the rule.

RESPONSE 17: The commission disagrees. The Operating Ratio methodology is established and is available to utilities eligible for simplified regulatory treatment. The forms and information is available from the commission upon request or on the commission's web site at [www.psc.mt.gov](http://www.psc.mt.gov).

/s/ JUSTIN KRASKE  
Justin Kraske  
Rule Reviewer

/s/ BRAD JOHNSON  
Brad Johnson  
Chairman  
Department of Public Service Regulation

Certified to the Secretary of State June 26, 2018.

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

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION AND
RULE I pertaining to the creation of a	)	AMENDMENT
legally enforceable obligation	)	
involving qualifying facilities, NEW	)	
RULE II pertaining to access to	)	
avoided cost modeling data for a	)	
qualifying facility, and the amendment	)	
of ARM 38.5.1901 pertaining to	)	
definitions	)	

TO: All Concerned Persons

1. On March 16, 2018, the Department of Public Service Regulation published MAR Notice No. 38-5-240 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 550 of the 2018 Montana Administrative Register, Issue Number 5.

2. The department has amended ARM 38.5.1901 as proposed.

3. The department has adopted NEW RULES I and II as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (38.5.1909) CREATION OF A LEGALLY ENFORCEABLE OBLIGATION (1) A legally enforceable obligation, ~~as that term is used in 18 C.F.R. § 292.304,~~ is created when ~~a qualifying facility has:~~

(a) a qualifying facility has unilaterally signed and ~~tendered an executed~~ power purchase agreement to the purchasing utility with a price term ~~consistent with the purchasing utility's avoided costs, calculated within 14 days of the date the power purchase agreement is tendered, with specified beginning and ending dates;~~ equal to either:

(i) the existing standard offer rate in accordance with the applicable standard tariff provisions as approved by the commission for qualifying facilities eligible for standard offer rates; or

(ii) a price term consistent with the purchasing utility's avoided costs, calculated within 14 days of the date the power purchase agreement is tendered, with specified beginning and ending dates for delivery of energy, capacity, or both to be purchased by the utility and provisions committing the qualifying facility to reimburse the purchasing utility for interconnection costs, pursuant to ARM 38.5.1901(2)(d) and 38.5.1904(2) and (3) for qualifying facilities not eligible for standard offer rates;

(b) undertaken at least the following work toward interconnection: a qualifying facility has obtained and provided to the purchasing utility written documents confirming control of the site for the length of the asserted legally enforceable

obligation and permission to construct the qualifying facility that establish, at a minimum:

~~(i) submitted an interconnection request to the interconnecting utility which has been signed by the qualifying facility in accordance with the generator interconnection procedures of the interconnecting utility's Open Access Transmission Tariff (OATT); proof of control of the site for the duration of the term of the power purchase agreement such as a lease or ownership interest in the real property;~~

~~(ii) paid any required deposit fee; proof of all required land use approvals and environmental permits necessary to construct and operate the facility; and~~

~~(iii) provided information sufficient to demonstrate that the qualifying facility has complied with the deadlines for an Interconnection Customer specified in the OATT; and permission to construct the qualifying facility as defined in ARM 38.5.1901(2)(f);~~

~~(iv) provided information sufficient to demonstrate that the qualifying facility has not waived deadlines applicable to the interconnecting utility, except that if such deadline or deadlines have been waived by the Interconnection Customer, or an alternative timeline has been agreed to by the Interconnection Customer, that a legally enforceable obligation will be created, for the purposes of this subsection, at the date or dates by which the Interconnection Customer agreed to in lieu of the deadlines specified in the OATT; and~~

~~(c) control of the site and permission to construct the qualifying facility, including at a minimum: a qualifying facility has submitted a completed generator interconnection request that either requested study for network resource interconnection service (NRIS) for facilities larger than 20 megawatts or requested an optional study equivalent to NRIS for facilities 20 megawatts and smaller; and~~

~~(i) a legally recognized interest in the real property on which the qualifying facility will be sited, such as a lease or ownership interest in the real property;~~

~~(ii) all required government land use approvals; and~~

~~(iii) all necessary environmental permits to build the facility.~~

~~(d) a qualifying facility has undertaken one of the following additional steps towards interconnection:~~

~~(i) the qualifying facility has executed and returned a signed System Impact Study Agreement, with any required deposit, to the interconnecting utility and all technical data necessary to complete the System Impact Study Agreement;~~

~~(ii) for qualifying facilities requesting to interconnect under the Small Generator Interconnection Procedures (SGIP), 53 days have elapsed since the qualifying facility submitted the interconnection request and all of the following conditions exist: the interconnecting utility did not provide the qualifying facility a System Impact Study Agreement within 38 days of the qualifying facility's interconnection request; the qualifying facility has not waived the tariffed SGIP timeline; and the qualifying facility has satisfied applicable interconnection customer deadlines in the tariffed SGIP;~~

~~(iii) for qualifying facilities requesting to interconnect under the Large Generator Interconnection Procedures (LGIP), 90 days have elapsed since the qualifying facility submitted a completed interconnection request with the interconnecting utility, and all of the following conditions exist: the qualifying facility~~



has not been provided a System Impact Study Agreement within 60 days of the initial interconnection request; the qualifying facility has not waived the timeline associated with the work of the interconnecting utility associated with the LGIP process; and the qualifying facility has timely met its deadlines established in the LGIP; or

(iv) for qualifying facilities that have waived the deadlines pertaining to the work of the interconnecting utility associated either with the SGIP or LGIP process, the mutually agreed upon time period after which the qualifying facility was scheduled to execute and return a signed System Impact Study Agreement, with any required deposit, to the interconnecting utility and all technical data necessary to complete the System Impact Study, has elapsed.

NEW RULE II (38.5.1910) QUALIFYING FACILITY ACCESS TO AVOIDED COST MODELING DATA (1) remains as proposed.

(2) The utility must provide an initial avoided cost calculation within 44 21 days of receipt of a qualifying facility's resource information, including generating technology, size, location, and production profile, at no cost to the qualifying facility. In providing an initial avoided cost calculation to the qualifying facility, the utility must use the methodologies most recently approved by the commission for that utility and must provide the qualifying facility with all assumptions and inputs used to make the avoided cost calculation.

(3) If a utility uses a proprietary modeling software to calculate its avoided cost, the utility must allow a qualifying facility, upon request, to conduct one avoided cost calculation using the utility modeling software with the qualifying facility's own assumptions and inputs at no cost to the qualifying facility. The utility must make dashboard access to its modeling software accessible to the qualifying facility within 44 21 days of the qualifying facility's request to conduct an alternative avoided cost calculation. The qualifying facility must have access to the modeling software for 44 21 days after the utility makes it available to the qualifying facility to conduct an alternative avoided cost calculation. A utility must accommodate reasonable requests by a qualifying facility to conduct additional avoided cost calculations using the utility's modeling software and may charge the qualifying facility a reasonable price for use of the modeling software beyond the single avoided cost calculation identified in this subsection.

(4) Pursuant to 69-3-206 and 69-3-209, MCA, a qualifying facility ~~or utility~~ may petition the commission for fines against a ~~qualifying facility or utility~~ for failure to adhere to this rule.

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 NO. 1: One commenter stated that the department's proposed New Rule I is inconsistent with Federal Energy Regulatory Commission (FERC) regulations. According to the commenter, New Rule I requires Qualifying Facilities (QFs) to make substantial investments prior to the establishment of a Legally Enforceable Obligation (LEO), even though the viability of a project is unknown until

the avoided cost rate is determined. Another commenter stated that the rule allows a utility to impose unreasonable restrictions that will effectively prevent many QFs from being able to form LEOs. Another commenter called the proposed rules impractical because they impose significant or costly burdens prior to the formation of a LEO. The department's rules would prevent many developers from being able to obtain financing because they would be required to spend significantly before knowing the purchase prices of their energy product.

RESPONSE: The department does not agree as the proposed New Rule I is consistent with FERC regulations. States are granted the primary role in overseeing the relationship between QFs and the utilities under the regulations promulgated by FERC. *Indep. Energy Producers Ass'n v. California PUC*, 36 F.3d 848, 856 (9th Cir. 1994). FERC leaves it to state commissions to determine the appropriate LEO test. FERC has consistently stated that "[it] is up to the States ... to determine the specific parameters of individual QF power purchase agreements, including the date at which a legally enforceable obligation is incurred under State law." *West Penn Power Co.*, 71 FERC ¶ 61,153, at 61,495 (1995). A LEO is a legally enforceable obligation and an unequivocal commitment by a QF to provide power to a utility. Therefore it requires a commitment from a QF to show the project is viable and can deliver power in the near future. New Rule I imposes reasonable restrictions on the creation of a LEO.

COMMENT NO. 2: One commenter stated that the problem QF developers face is that they cannot get the utility to negotiate with them and that a LEO cannot be established until after a full commission proceeding. They state that a LEO should correspond with the date from which the avoided cost will be calculated, not the date at which an avoided cost is already agreed to. One commenter supports the commission's acknowledgement that a QF should be able to establish a LEO without completing Power Purchase Agreement (PPA) negotiations, but it recommends that the commission also address situations where PPA negotiations have been completed and signed by the QF. One commenter testified that generally NorthWestern is unwilling to negotiate a price other than the avoided cost that NorthWestern generates. The commenter states that the language "with a price term consistent with the purchasing utility's avoided cost," should be removed from New Rule I. The commenter recommends that a QF should be found to have established a LEO on the date negotiations end with the utility or when the utility refuses to negotiate its initial offer. The commenter stated that New Rule I should include incentives for utilities to negotiate with QF developers and avoid commission contested hearings. The commenter said that there should be a sanction on the utility for failure to negotiate in good faith. Examples of behaviors that would incur sanctions are refusal to change an original offer, refusal to allow access to proprietary software models used to develop avoided costs, or purposefully offering numbers below avoided cost. Another commenter expressed concerns about unforeseen hurdles throughout the negotiation process and that QFs should be able to trigger a LEO at any time during negotiations with a utility.

RESPONSE: Under the LEO rule adopted by the department, the utility is required to negotiate in good faith with the QF and the department can and will entertain complaints from the QF if that does not occur. These objectives must be balanced against requiring the QF to do more than just initiate negotiations with a utility to trigger a LEO to avoid paper projects merely engaged in speculation. In support of a more lenient LEO standard, commenters quote to *JD Wind 1, LLC*, which states that "a QF, by committing itself to sell to an electric utility, also commits the electric utility to buy from the QF; these commitments result either in contracts or in non-contractual, but binding, legally enforceable obligations." 129 F.E.R.C. ¶ 61,148, at 61633 (Nov. 19, 2009). FERC's declaratory order (or declaratory letter) in *JD Wind 1, LLC* was later appealed to Fifth Circuit Court of Appeals. *Exelon Wind 1, L.L.C. v. Nelson*, 766 F.3d 380, n.5 (5th Cir. 2014) ("Exelon Wind"). In *Exelon Wind*, the Fifth Circuit found FER's conclusions in *JD Wind 1, LLC* were incorrect and upheld the Texas Public Utility Commission's 90-day LEO standard. *Id.*, 395–97. If a QF were simply able to incur a LEO by simply committing itself to sell an electric utility, then Texas' 90-day rule would be invalid because it imposes more strenuous obligations than the QF merely executing a power purchase agreement to the utility. *Id.*, 385–86 (observing that under the 90-day rule only QFs that are capable of generating "firm power" are eligible and for the remaining QFs that the ability to sell their power as available is sufficient). The court noted that the Texas Public Utility Commission "left open the possibility that other wind farms might be able to provide firm power, and thus form Legally Enforceable Obligations." *Id.*, 396. Accordingly, this language in *JD Wind 1, LLC* cannot be viewed as requiring the department to allow any QF that has made a *de minimis* commitment to sell its energy—whether it's through simply tendering an executed power purchase agreement to the utility or otherwise—to incur a LEO.

Since the Fifth Circuit's decision in *Exelon Wind* on September 8, 2014, FERC has applied this language from *JD Wind 1, LLC* in a more limited fashion. In *FLS Energy, Inc.*, FERC cited to this language to assert that "a legally enforceable obligation turns on the QF's commitment, and *not* the utility's action." 157 F.E.R.C. ¶ 61,211, at 61731 (Dec. 15, 2016). In *E. Ky. Power Coop., Inc.*, FERC examined this *JD Wind 1, LLC* language but noted that formation of a LEO might be restricted under state law. 162 F.E.R.C. ¶ 61,267, at 62444, n.11 (Mar. 26, 2018); *see also N. States Power Co.*, 151 F.E.R.C. P61,110, 61689 (May 14, 2015) (declining to examine the LEO issue because the case could be decided on other grounds). These FERC declaratory orders are consistent with *Exelon Wind*, which requires states to implement a LEO standard achievable through the QF's own actions. Additionally, this rule allows QFs to incur a LEO through their own actions.

COMMENT NO. 3: Several commenters suggested that the rule should further clarify that, at the very latest, a QF should be found to have created a LEO on the date it files a petition or complaint with the commission. A petition with the commission requires a substantial investment of time and legal expenses, and occurs only after negotiations between the QF and utility have stalled. By that point, a QF is clearly committed to developing the project if it is willing to file a petition with the commission.

RESPONSE: The department appreciates the comments and acknowledges that filing a petition or complaint can require a substantial investment of time and expenses. However there are more relevant requirements to trigger the creation of a LEO. Relevant requirements that the department has proposed in its rule include a unilaterally executed PPA, executing a signed System Impact Study Agreement or demonstrating a commitment to obtain a System Impact Study Agreement, and having site control for the length of the asserted LEO.

COMMENT NO. 4: Several commenters state that a LEO should be established by tendering an executed power purchase agreement that includes the QF's reasonable calculation of avoided cost.

RESPONSE: The department's New Rule I satisfies the intent of this comment because a QF's reasonable calculation of avoided cost should result in a rate in the signed power purchase agreement tendered to the utility by the QF that is consistent with the utility's avoided cost. New Rule II enhances a QF's ability to develop a reasonable calculation of avoided cost.

COMMENT NO. 5: One commenter stated that New Rule I does not distinguish between QFs that are eligible for standard rates and those that are not. The commenter stated that there are generally three sizes of QFs. Those eligible for standard rates, those larger than the standard rate threshold up to 20 MW, and those larger than 20 MW. The commenter suggests that the rule should be amended so standard-rate QFs do not require an avoided cost calculation.

RESPONSE: The department agrees and has updated New Rule I to distinguish between QFs that are eligible for standard rates and those that are not.

COMMENT NO. 6: One commenter stated that for larger QFs, New Rule I does not have the specificity needed to clarify the areas being litigated and the rule should be modified to include a limit of 12 months between execution of a PPA and commercial operation date. In addition, contracts should be limited to 15 years and QFs should be required to utilize market price projections consistent with the method most recently used by the commission. Finally the rule should recognize that a QF may displace both market purchases and economically dispatched owned generation.

RESPONSE: The department appreciates the comments, but finds that further specificity, as suggested by the commenter, should be the subject of future rulemaking proceedings.

COMMENT NO. 7: Several commenters provided comments in support of the commission's rulemaking and stated that a LEO is an unequivocal commitment to sell on behalf of the QF. It is more than just a speculative proposal. The commission's requirements are designed to ensure the feasibility of the QF projects.

RESPONSE: The department appreciates these comments and agrees that a LEO is an unequivocal commitment to sell on behalf of the QF. The department's requirements are designed to ensure the feasibility of the QF projects and that the project is more than just a speculative paper project.

COMMENT NO. 8: The commenter states that New Rule I(1)(b) violates FERC Order 888, which requires interconnection employees to remain unaware of who the project owner is when an interconnection request is made (for example, if it is a QF or utility-owned). In Montana, once a QF contested case petition is filed with the Commission, the utility's interconnection and transmission employees are involved in testimony about the QF's interconnection requests and studies.

RESPONSE: The department does not agree as FERC subsequently adopted regulations requiring open access same time information systems (OASIS) and codes of conduct for transmission providers, such as NorthWestern Energy, in 18 C.F.R. Part 358. These requirements constitute the "additional safeguards" FERC identified as necessary to protect against market power abuses in Order 888. In addition, FERC subsequently issued Orders 2003 and 2006 to standardize the interconnection procedures for generators. Since the interconnection of any electric generator, including a QF, to a utility transmission system must cohere to these procedures, and since interconnection is a prerequisite to a generator's ability to deliver energy and capacity, the interconnection requirements in this rule are reasonable and do not violate FERC regulations.

COMMENT NO. 9: Several commenters stated that the requirements for a QF to obtain all required government land-use approvals and all necessary environmental permits prior to incurring a LEO should not be included in New Rule I(1)(c). Those requirements are outside of the control of the developer and create a disincentive to LEO formation. The commenters object to what they characterize as development hurdles in the commission's proposed New Rule I(1)(c). The requirements that a developer must have a lease or ownership interest in the real property, obtain all government land-use approvals, and obtain all environmental permits is not necessary to demonstrate a QF's unequivocal commitment to sell its output to a utility. Such requirements are not necessary to execute a binding PPA, and so should not be conditions of establishment of a LEO. The commenters also object to the vagueness of New Rule I(1)(c), as it could lead to litigation over issues, for example, whether or not the option to lease or purchase would satisfy the rule's conditions for site control.

RESPONSE: The department appreciates the comments; however the requirements in the rule for a QF to have site control for the length of the asserted LEO are important and relevant requirements. Based on comments received, several projects have asserted LEOs in the past only to find out later that they cannot move forward because they do not have a legal interest in the land or they have not obtained the necessary governmental approvals to build their facility as proposed. Site control has been required by several other states as appropriate requirements for the creation of a LEO. Courts have upheld state commissions'

findings that a QF had established a LEO because the QF project had demonstrated significant technical and operational development—not simply a unilateral tender of a PPA by the QF. For example, the Supreme Court of New Hampshire upheld the state commission's finding that a QF had formed a LEO where, in addition to unilaterally tendering an IA, the QF demonstrated that it had obtained siting and environmental permits, secured property rights, and sufficiently advanced its design and construction plans, among other things. *Appeal of Public Service Co. of N.H.*, 539 A.2d 275, 281 (N.H. 1988). By contrast, a Pennsylvania court upheld the state commission's finding that a QF was not yet viable so as to establish a LEO where it had not yet acquired necessary permits, site development approval, or construction plans and financing. *South River Power Partners, L.P. v. Pennsylvania PUC*, 696 A.2d 926, 931 (Pa. 1997) (detailing actions not taken by QF). The department has amended the proposed rule to ensure it is as clear as possible to hopefully avoid any issues of clarity or litigation.

COMMENT NO. 10: Several commenters expressed support for the commission's proposal to ascertain a developer's legal interest in the real property for the project, all required government land use approvals, and all necessary environmental permits. One of those commenters suggested modifications to this section including requiring the developer to provide site control documents to the utility, verifying that site control is for the length of the asserted LEO, provide proof of lease or fee ownership in the property, and submission of land use and environmental permits necessary to construct the facility. The commenter made reference to various situations where developers had asserted LEOs but either a governmental body refused a zoning change, refused to issue a conditional permit, or a developer did not have an executed lease so the project could not move forward. Another commenter said it's reasonable to require a QF to provide some initial evidence of its ability to gain regulatory land approval but obtaining all approvals and environmental permits imposes an unrealistic burden on the QF.

RESPONSE: The department appreciates those comments and has made some modifications to the site control requirements. Site control has been required by several other states as appropriate requirements for the creation of a LEO as discussed above. Based on comments received, several projects have asserted LEOs in the past only to find out later that they cannot move forward because they do not have a legal interest in the land or they have not obtained the necessary governmental approvals to build their facility as proposed. After significant time has been expended by the QF developer, intervenors, and the department, that project cannot move forward because a local government does not approve the project. The department finds this is a reasonable requirement.

COMMENT NO. 11: One commenter supported the interconnection request requirement, but suggested that there should be flexibility in cases where the utility violates its own OATT timelines and causes delays. Another commenter states that the interconnection milestones in the proposed rule may contradict the FERC ruling that no rigid policy controllable by the utility may be allowed to prevent a QF from committing to sell its output.

RESPONSE: The department appreciates the comments and has amended the interconnection requirements to ensure that if a utility violates its own OATT timelines a LEO can still be created. The department has included timelines that a utility must meet; otherwise a LEO will be created by lack of utility action. For example in New Rule I, if a QF is requesting to interconnect under the SGIP and 53 days have elapsed since the qualifying facility submitted the interconnection request and all of the following conditions exist: the interconnecting utility did not provide the qualifying facility a System Impact Study Agreement within 38 days of the qualifying facility's interconnection request; the qualifying facility has not waived the tariffed Small Generator Interconnection Procedure (SGIP) timeline; and the qualifying facility has satisfied applicable interconnection customer deadlines in the tariffed SGIP, then a LEO will be created. Then for qualifying facilities requesting to interconnect under the Large Generator Interconnection Procedures (LGIP), 90 days have elapsed since the qualifying facility submitted a completed interconnection request with the interconnecting utility, and all of the following conditions have been met: the qualifying facility has not been provided a System Impact Study Agreement within 60 days of the initial interconnection request; the qualifying facility has not waived the timeline associated with the work of the interconnecting utility associated with the LGIP process; and the qualifying facility has timely met its deadlines established in the LGIP, then a LEO will be created.

COMMENT NO. 12: One commenter discussed that the timelines for large and small generator interconnection requests for varying sizes of QFs are relatively similar and the commenter attached interconnection request forms to its comments. The interconnection process begins with a developer submitting an Interconnection Request to the utility's transmission group, which triggers timelines. The commenter observes that developers abandon many projects either after the scoping meeting or when the first study reveals adverse system impacts. The commenter states that in order for the utility to have the necessary planning information and to calculate a correct avoided cost, the interconnection application must be complete. In addition, to ensure the developers have considered the cost of interconnection, the rule should require a QF to have agreed to complete either a System Impact Study or Facilities Study before creating a LEO. The commenter stated that these amendments will add simplicity and clarity to the proposed rule by ensuring that the QF developer is committed to a real, rather than a paper project.

RESPONSE: The department appreciates these comments and the detail provided about the timelines for SGIP and LGIP. The department agrees that the QF should be required to agree to complete a System Impact Study before creating a LEO and the rule has been amended consistent with these comments. The department shares the concerns of the commenter that the QF developer needs to make sufficient commitments by proceeding part of the way through the interconnection process to confirm it has committed to a real project and not just a paper project. These recommendations, in part, are adopted in this rule.

COMMENT NO. 13: One commenter was concerned that the proposed New Rule II is too ambiguous in describing the access QFs will have to PowerSimm modeling. Developers should have full access to the model and be allowed to make any adjustments to input and output parameters, as well as access to the utility's input and assumptions in its avoided cost models. It should not be left to the utility or the commission to determine what constitutes a "reasonable request" any time an issue arises. NorthWestern and QF developers also have different definitions of what constitutes "reasonably transparent data." Another commenter supported the commission's attempt to improve QF access to utility avoided cost data and agree with the commission's definition of production profile. This commenter proposed various changes to the wording in New Rule II.

RESPONSE: The department appreciates the comments and has clarified New Rule II to more specifically describe the access QFs will have to a utility's proprietary modeling software. The department does not agree that QFs must have full, unfettered access to a utility's modeling software in order to obtain an adequate understanding of the utility's avoided cost calculation. In addition to being able to conduct alternative avoided cost calculations with the utility's model, QFs will have all the inputs and assumptions underlying a utility's calculations and can, if they choose, use their own modeling software to make alternative calculations.

COMMENT NO. 14: One commenter stated that the requirement in New Rule II(2) for a utility to provide an avoided cost within 14 days of a request from a QF is sometimes unachievable due to factors outside of the utility's control. The commenter proposes that the 14 day requirement be extended to 21 days after receipt of resource data or if not feasible an estimate of when the avoided cost will be provided. The commenter also stated the utility should be able to request resource data that underlies the QF's production profile. Finally upon receipt of the resource data, the utility should be allowed seven days to provide the market project inputs to the QF.

RESPONSE: The department generally agrees with the commenter and has extended the deadline to 21 days. The department also clarified the rule that the QF must provide the resource information, including generating technology, size, and location of the facility. In addition, the rule was clarified that the utility must provide the qualifying facility with all assumptions and inputs used to make the avoided cost calculation. Out of fairness, QFs will have an equal 21 days of access to the model.

COMMENT NO. 15: One commenter stated that New Rule II(3), established bad public policy and imposes unreasonable costs on either the utility or its customers. The commenter recommends that all costs incurred for QFs to access proprietary software for an alternative avoided cost calculation be recoverable in a tracking mechanism. Any additional costs after the first alternative calculation should be borne by the QF. Finally the software developer should separately invoice costs for calculations requested by QFs.



RESPONSE: FERC regulations state that when a QF chooses to deliver power to a utility pursuant to a LEO, rates must be based on avoided costs calculated on the date the obligation was incurred. In addition, a utility is obligated to make available information from which its avoided costs may be determined. Thus, it is neither bad public policy nor unreasonable to require a utility to provide a QF reasonable access to the inputs, assumptions, and modeling software used to determine avoided costs. Multiple methods are available to make avoided cost calculations, not all of which require a utility to use proprietary modeling software. Where a public utility chooses to use proprietary modeling software, compliance with FERC regulations and the public interest require mechanisms to ensure adequate transparency so that any rates based on the resulting avoided costs do not discriminate against QFs.

COMMENT NO. 16: One commenter reminded the commission that several issues addressed in this rulemaking are currently before the courts in various proceedings, and the commission may want to consider the timing of its rulemaking to include commentary and direction that may be issued by the courts.

RESPONSE: The department appreciates this comment. The department has tried to balance the timing of its rulemaking based on the various proceedings ongoing. On November 24, 2017, the department issued Order No. 7500d and invited any interested party to file a petition to initiate rulemaking pursuant to 2-4-315, MCA, to address the Whitehall Wind LEO test. No petition for rulemaking was filed by any interested person. Therefore in March of 2018, the department, on its own initiative, filed a rulemaking notice with the Secretary of State. The department is aware that Courts may have some guidance on whether the LEO rule should be amended or not, but the department is the appropriate entity to determine what the LEO test should look like. The department has decided it is appropriate to finalize the rulemaking based on the oral and written comments received.

COMMENT NO. 17: One commenter stated that the amendment of the definition of production profile in ARM 38.5.1901 is clear and correct as it allows for the self-produced energy production modeling based on widely available data that is the industry standard for renewables. The commenter stated that they appreciate the commission clarifying the definition.

RESPONSE: The department appreciates the comment and amends ARM 38.5.1901 as proposed.

/s/ JUSTIN KRASKE

Justin Kraske  
Rule Reviewer

/s/ BRAD JOHNSON

Brad Johnson  
Chairman  
Department of Public Service Regulation

Certified to the Secretary of State June 26, 2018.

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

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

#### **Economic Affairs Interim Committee:**

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

#### **Education and Local Government Interim Committee:**

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

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

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

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

**Environmental Quality Council:**

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

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

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

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

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

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

### Definitions:

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

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

### Use of the Administrative Rules of Montana (ARM):

Known  
Subject

1. Consult ARM Topical Index.  
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

## RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2017. This table includes notices in which those rules adopted during the period September 30, 2017, through December 31, 2017, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2017, 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 2017 and 2018 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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**COREY STAPLETON**  
SECRETARY OF STATE

P.O. BOX 202801  
HELENA, MONTANA 59620