

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print 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) 444-2055.

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BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.94.3727 pertaining to the) PROPOSED AMENDMENT
administration of the 2015-2016)
Federal Community Development)
Block Grant (CDBG) Program)

TO: All Concerned Persons

1. On March 4, 2015, at 1:00 p.m., the Department of Commerce will hold a public hearing in Room 226 of the Park Avenue Building at 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce 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 Commerce no later than 5:00 p.m. on February 27, 2015, to advise us of the nature of the accommodation that you need. Please contact Amy Peck, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2869; fax (406) 841-2771; TDD (406) 841-2702; or e-mail apeek@mt.gov.

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

8.94.3727 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2013-2014 2015-2016 CDBG PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Community Development Block Grant Program FFY ~~2013-2014~~ 2015-2016 Application Guidelines for Housing and Public Facilities Planning Grants (~~June 2014 Draft~~); the FFY ~~2013-2014~~ 2015-2016 Application Guidelines for Noncompetitive Housing Grants; the FFY 2011 Application Guidelines for the Community Development Block Grant Economic Development Program as amended April 2012; the FFY 2012 Application Guidelines for the Community Development Block Grant Economic Development Program; the Montana Community Development Block Grant Economic Development Program FFY 2013-2014 Application Guidelines for Planning Projects; ~~the Montana Community Development Block Grant FFY 2011 Application Guidelines for the Neighborhood Stabilization Program (NSP);~~ the Montana Community Development Block Grant Program and Neighborhood Stabilization Program FFY ~~2013-2014~~ 2015-2016 Grant Administration Manual published as rules for the administration of the CDBG and NSP programs; and the Montana Community Development Block Grant Program ~~FFY 2013 and FFY 2014~~ FFY 2015-2016 Application Guidelines for Public Facilities Projects and the ~~FFY 2013 and FFY 2014~~ FFY 2015-2016 Application Guidelines for Housing and Neighborhood Renewal Projects.

- (2) The rules incorporated by reference in (1) relate to the following:
- (a) policies governing the program;
 - (b) requirements for applicants;
 - (c) procedures for evaluating applications;
 - (d) procedures for local project start up;
 - (e) environmental review of project activities;
 - (f) procurement of goods and services;
 - (g) financial management;
 - (h) protection of civil rights;
 - (i) fair labor standards;
 - (j) acquisition of property and relocation of persons displaced thereby;
 - (k) administrative considerations specific to public facilities, housing and neighborhood renewal, economic development, and neighborhood stabilization projects;
- (l) project audits;
 - (m) public relations;
 - (n) project monitoring; and
 - (o) planning assistance.
- (3) Copies of the Application Guidelines and Grant Administration Manual adopted by reference in (1) can be viewed on the department's web site at <http://comdev.mt.gov/default.mcp> or <http://comdev.mt.gov/planningbureau/planningbureau.mcp>, or may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule because the federal regulations governing the state's administration of the FFY 2015-2016 Community Development Block Grant Program (CDBG) and 90-1-103, MCA, require the department to adopt rules to implement the program.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Andrew Chanania, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2551; fax (406) 841-2773; TDD (406) 841-2702; or e-mail achanania@mt.gov, and must be received no later than 5:00 p.m., March 12, 2015.

5. Andrew Chanania, Department of Commerce, 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. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Kelly A. Lynch
KELLY A. LYNCH
Rule Reviewer

/s/ Douglas Mitchell
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State January 30, 2015

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.53.113 pertaining to registration and)
registration maintenance fees: fee)
assessment)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(HAZARDOUS WASTE)

TO: All Concerned Persons

1. On March 4, 2015, at 1:30 p.m., the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., February 23, 2015, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.53.113 REGISTRATION AND REGISTRATION MAINTENANCE FEES:
FEE ASSESSMENT (1) For the purposes of this rule, "as-generated waste" means hazardous waste generated from tanks, containers, and other process units in the course of regular, ongoing, and closure of commercial, production, or other industrial activities. "Remediation waste" means all hazardous waste, debris, and media, including ground water, surface water, soils, and sediments, that are managed for implementing cleanup.

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

~~(2)~~ (3) The department shall assess an annual registration maintenance fee, as provided in ~~(3)~~ (4), for the following hazardous waste generators:

(a) through (c) remain the same.

~~(3)~~ (4) The annual registration maintenance fee for a calendar year is \$200 plus a per-ton fee for all regulated hazardous waste generated during the previous calendar year of:

(a) \$5 15 per ton for all regulated ~~hazardous~~ remediation waste generated during the ~~2009~~ 2014 calendar year and each year thereafter;

(b) \$40 20 per ton for all regulated ~~hazardous~~ as-generated waste generated during the ~~2010~~ 2014 calendar year;

(c) \$45 25 per ton for all regulated ~~hazardous~~ as-generated waste generated during the ~~2011~~ 2015 calendar year; and

(d) \$20 30 per ton for all regulated ~~hazardous~~ as-generated waste generated during the ~~2012~~ 2016 calendar year; and each year thereafter.

(5) The total of the fees assessed pursuant to (4)(a) for a calendar year must not exceed twice the appropriated amount for the special revenue account as provided in 75-10-434, MCA, for that calendar year. The department shall refund, on a pro rata basis, the amount of the fees collected under (4)(a) that exceed twice the appropriated amount for the special revenue account for a calendar year to the persons who generated remediation waste during that calendar year.

~~(4)~~ (6) The per-ton fee in ~~(3)~~ (4)(a) through (d) is assessed only if the amount of regulated hazardous waste generated during the previous calendar year is equal to or greater than 1.3 tons.

(5) through (9) remain the same, but are renumbered (7) through (11).

AUTH: 75-10-404, 75-10-405, MCA

IMP: 75-10-405, MCA

REASON: The proposed rule amendment is necessary to provide adequate and stable funding to support the delegated hazardous waste program and also to provide an incentive for remedial action by reducing the per-ton fee assessed for remediation waste and by capping the amount of fees the department collects for remediation waste. The proposed rule amendment accomplishes both of these objectives by providing definitions that distinguish hazardous waste generated by remediation activities and hazardous waste generated by non-remedial activities, reducing the fee on remediation waste to \$15 per ton and providing for a step increase in the as-generated waste fee by increasing the as-generated waste fees from \$20 per ton to \$30 per ton over the next two years. As a further incentive to increase remedial action, the department is proposing to cap the fees assessed for remediation waste to twice the appropriated amount for the special revenue account as provided in 75-10-434, MCA, and to refund to the persons who generated the remediation waste, on a pro rata basis, any monies the department collects over this established cap. To establish a distinction between as-generated and remediation waste for the purposes of assessing hazardous waste generation fees, the department is proposing to add the definition of "as-generated waste."

The number of persons impacted by the proposal cannot be determined with precision. There are approximately 200 registered hazardous waste generators in Montana. Based on program experience, it is estimated that during any year a range of one to ten of those generators would engage in remediation activities. It is estimated that approximately \$250,000 (\$100,000 in as-generated waste fees and \$150,000 in remediation waste fees) would be generated in calendar year 2015. It is important to note that the department bills in arrears and therefore this \$250,000 figure would be for waste generated during calendar year 2014. Under the proposed rule amendments, an additional \$25,000 in as-generated waste fees would be paid in calendar year 2016 (\$125,000) and an additional \$50,000 in as-generated waste fees would be paid in calendar year 2017 and succeeding years (\$150,000). The remediation waste component revenue in any given year would be capped at approximately \$600,000.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., March 12, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Carol Schmidt, attorney for the Department of Environmental Quality, has been designated to preside over and conduct the 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 that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

8. 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.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Tom Livers

TOM LIVERS, Director

Certified to the Secretary of State, February 2, 2015.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
17.8.102 and 17.8.103 pertaining to) PROPOSED AMENDMENT
incorporation by reference--publication)
dates and incorporation by reference) (AIR QUALITY)
and availability of referenced documents)

TO: All Concerned Persons

1. On March 5, 2015, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., February 23, 2015, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) In this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2013~~ 2014, edition of the Code of Federal Regulations (CFR), as it is published on the web site of the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2014&go=Go>;

(b) adopted a section of the United States Code (USC) by reference, the reference is to the ~~2012~~ 2013 edition of the USC as it ~~exists on December 31, 2013~~ is published on the web site of the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collectionUScode.action?selectedYearFrom=2013&go=Go>;

(c) adopted a rule of the state of Montana from another chapter of the Administrative Rules of Montana (ARM), the reference is to the rule in effect on ~~June 30, 2013~~ September 30, 2014.

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

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

17.8.103 INCORPORATION BY REFERENCE AND AVAILABILITY OF

REFERENCED DOCUMENTS (1) through (3) remain the same.

(4) Copies of the CFR may be obtained from the U.S. Government Printing Office, at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2014&go=Go>. When printed versions are available, they may be obtained as described in (3)(c).

(5) Copies of the U.S. Code may be obtained from the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collectionUScode.action?selectedYearFrom=2013&go=Go>. When printed versions are available, they may be obtained as described in (3)(c).

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to amend the air quality rules to update editions of federal and state statutes, rules, and regulations that are incorporated by reference. The board is proposing to amend ARM 17.8.102(1) and 17.8.103(4) and (5) to adopt revisions to federal regulations published in the July 1, 2014, edition of the Code of Federal Regulations (CFR), as it is published on the web site of the U.S. Government Printing Office, the 2013 edition of the U.S. Code, as it is published on the web site of the U.S. Government Printing Office, and the September 30, 2014, edition of the ARM. The reason for the reference to a specific web page of the CFR is that the CFR is published in a new codified version every year. For Title 40, which contains most of the federal regulations adopted by reference by the board for air quality regulation, the official version is dated July 1 of each year. However, the online version is not available by that date and the printed version is not available for more than four months after that date. The board adopts the July 1 edition after the online version has been made available. The reason for the reference to a specific web page for the U.S. Code is that the U.S. Code is published in a new codified printed version every six years. The most recent printed version is 2012. It is updated online by the U.S. Law Revision Counsel, which is associated with the U.S. House of Representatives, as new laws are enacted. It then takes about eight months before all titles of the U.S. Code are updated on the web site of the U.S. Government Printing Office (U.S. GPO) with the changes enacted into law by the previous session of Congress. It takes about another ten months for a printed annual supplement to be distributed. The U.S. GPO publishes the printed versions and its web site is the most authoritative site for the official online version of the U.S. Code. It is the version on this web site that the board is proposing to use as the version of the updated U.S. Code referred to in its rules in ARM Title 17, chapter 8. The board adopts and incorporates by reference updates to federal regulations to ensure that Montana's air quality rules are at least as stringent as federal air quality regulations, to maintain primacy and federal delegation of Montana's air quality program, and to implement federal emissions standards according to a federal program of emissions control.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., March 12, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Ben Reed, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH
Rule Reviewer

BY: /s/ Robin Shropshire

ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, February 2, 2015.

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

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 24.30.102, 24.30.104,	)	AMENDMENT AND REPEAL
24.30.105, 24.30.106, 24.30.107)	
workplace safety, and the repeal of	)	NO PUBLIC HEARING
24.16.101, 24.16.1001, 24.16.1003,	)	CONTEMPLATED
24.16.1509, 24.16.1510, 24.16.2511,)	
24.16.2545 wage protection,)	
24.21.1001, 24.21.1011, 24.21.1501)	
workforce services, and 24.30.1301,)	
24.30.1303 workplace safety)	

TO: All Concerned Persons

1. On March 16, 2015, the Department of Labor and Industry proposes to amend and repeal the above-stated rules.

2. The Department of Labor and Industry 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 Labor and Industry no later than 5:00 p.m. on February 26, 2015, to advise us of the nature of the accommodation that you need. Please contact Bryan Page, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624; telephone (406) 444-1605; fax (406) 444-9396; TDD (406) 444-5549; or e-mail bpage@mt.gov.

3. GENERAL REASONABLE NECESSITY: In 2009, the Montana Legislature passed House Bill 138 and enacted the Montana Occupational Safety and Health Act, codified at 50-71-112, MCA, et seq. The bill also repealed the Montana Safety Act, codified at 50-71-301, et seq. The department determined it is reasonably necessary to amend the workplace safety rules to reflect the current title of the Montana Occupational Safety and Health Act, correct statutory citations, and update the federal regulations adopted by reference in accordance with the 2009 statutory changes.

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

The department has also determined that reasonable necessity exists to repeal several unnecessary rules concerning wage protection, workforce services, and workplace safety. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

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

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR PUBLIC SECTOR EMPLOYMENT (1) Section ~~50-71-311~~ 50-71-114, MCA, of the Montana Occupational Safety and Health Act provides that the Department of Labor and Industry may adopt, amend, repeal, and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment to render them safe. The federal Occupational Safety and Health Act of 1970 does not include safety standards coverage for employees or political subdivisions of this state. It is the intent of this rule that public sector employees and political subdivisions of this state shall be protected to the greatest extent possible by the same safety standards for employments covered by the federal Occupational Safety and Health Act of 1970. The department is therefore adopting by reference certain occupational safety and health standards, adopted by the United States Secretary of Labor under the federal Occupational Safety and Health Act of 1970. The department has determined, with the assent of the Secretary of State, that publication of the rules would be unduly cumbersome and expensive. Copies of the rules adopted by reference are available and may be obtained at cost from the Montana Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.

(2) remains the same.

(a) "Act" means the Montana Occupational Safety and Health Act (~~50-71-104~~ 50-71-111 through ~~50-71-334~~ 50-71-123, MCA).

(b) through (d) remain the same.

(3) The Department of Labor and Industry adopts a safety code for every place of employment conducted by a public sector employer. This safety code adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations, as of July 1, ~~2008~~ 2014:

(a) and (b) remain the same.

(4) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards adopted above and printed in the Code of Federal Regulations, Title 29, as of July 1, ~~2008~~ 2014, are considered under this rule as the printed form of the safety code, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code. All the provisions, remedies, and penalties found in the Montana Occupational Safety and Health Act apply to the administration of the provisions of the safety code adopted by this rule.

(5) remains the same.

AUTH: ~~50-71-311~~ 50-71-114, MCA

IMP: 50-71-112, 50-71-114, 50-71-115, 50-17-118 ~~50-71-311, 50-71-312~~,
MCA

24.30.104 INSPECTIONS AND CITATIONS (1) remains the same.

(a) Each employer shall post and keep posted a notice or notices, to be furnished by the department's Safety Bureau, informing employees of the protections and obligations provided for in the Montana Occupational Safety and Health Act. Such notice or notices shall be posted by the employer in each public entity in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced, or covered by other material.

(b) Any representative of the safety bureau appearing at any place of employment including, but not limited to, any field operation, for the purpose of carrying out the intent and purpose of the Montana Occupational Safety and Health Act, shall be allowed entry without delay and at reasonable times.

(c) Any safety bureau representative may consult with employees concerning matters of occupational safety and health to the extent the representative deems necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Montana Occupational Safety and Health Act which the employee has reason to believe exists in the workplace to the attention of the safety bureau representative.

(d) Upon receipt of any citation under the Montana Occupational Safety and Health Act, the employer shall immediately post an unedited legible copy in a prominent place where it will be readily observable by all affected employees. A copy of the completed Mandatory Inspection Response form(s) shall be posted at the same location the citations were posted no later than the time the original Mandatory Inspection Response form is submitted to the safety bureau. It shall remain posted for 30 days or until all abatement action has been approved by the safety bureau, whichever period is longer.

AUTH: 50-71-114, 50-71-311, MCA

IMP: 50-71-118, 50-71-119, 50-71-123, 50-71-311, 50-71-312, MCA

24.30.105 RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES: PURPOSE AND SCOPE (1) Pursuant to ~~50-71-311~~ 50-71-117, MCA of the Montana Occupational Safety and Health Act and to supplement ARM ~~24.30.102~~ 24.30.107, the Department of Labor and Industry establishes this rule with the purpose of providing a vehicle for recording of all occupational accidents, injuries, and illnesses involving public sector employees covered under the act as necessary or appropriate. Further, this rule provides for developing information regarding the causes and prevention of occupational accidents and maintaining a program of collection, compilation, and analysis of occupational safety and health statistics.

AUTH: 50-71-114, 50-71-301, 50-71-311, MCA

IMP: 50-71-117, 50-71-119, 50-71-301, 50-71-311, 50-71-312, MCA

24.30.106 RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES: DEFINITIONS As used in this rule, unless the context clearly requires otherwise:

(1) through (5) remain the same.

AUTH: 50-71-114, 50-71-311, MCA

IMP: 50-71-117, 50-71-312, MCA

24.30.107 RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES: LOG AND SUMMARY (1) through (7) remain the same.

AUTH: 50-71-114, 50-71-301, 50-71-311, MCA

IMP: 50-71-112, 50-71-113, 50-71-117, 50-71-301, 50-71-311, 50-71-312,
MCA

5. The department proposes to repeal the following rules:

24.16.101 GENERAL STATEMENT found at ARM page 24-937.

AUTH: 39-3-402, MCA

IMP: 39-3-401, MCA

REASON: The department is repealing this rule because it unnecessarily restates 39-3-401, MCA, which sets forth the policy to establish and safeguard the minimum wage and overtime laws.

24.16.1001 INTRODUCTORY STATEMENT found at ARM page 24-1005.

AUTH: 39-3-403, MCA

IMP: 39-3-404, 39-3-405, MCA

REASON: The department is repealing this unnecessary rule as it broadly restates minimum wage and overtime provisions adequately addressed in 39-3-404 and 39-3-405, MCA.

24.16.1003 JUDICIAL CONSTRUCTION found at ARM page 24-1005.

AUTH: 39-3-403, MCA

IMP: 39-3-404, 39-3-405, MCA

REASON: This rule is being repealed as it merely describes antiquated case law related to the definition of "employment" and "workweek," both of which are currently defined by Montana law.

24.16.1509 PROCEDURE FOR DETERMINING MINIMUM WAGE found at ARM page 24-1039.

AUTH: 39-3-403, MCA
IMP: 39-3-409, MCA

REASON: The department is repealing this unnecessary rule because it merely references outdated state and federal acts containing the procedures to establish minimum wage levels. These provisions are adequately addressed in statute at 39-3-409, MCA.

24.16.1510 MINIMUM WAGE RATE found at ARM page 24-1039.

AUTH: 39-3-403, MCA
IMP: 39-3-409, MCA

REASON: The department is repealing this unnecessary rule that lists outdated minimum wage levels. This information is adequately addressed in statute at 39-3-409, MCA.

24.16.2511 GENERAL STANDARD FOR OVERTIME PAY found at ARM page 24-1075.

AUTH: 39-3-403, MCA
IMP: 39-3-404, 39-3-405, 39-3-406, MCA

REASON: This rule is being repealed as the provisions on overtime pay are sufficiently addressed in statute at 39-3-405, MCA.

24.16.2545 AGREEMENTS OR PRACTICES IN CONFLICT WITH STATUTORY REQUIREMENTS ARE INEFFECTIVE found at ARM page 24-1111.

AUTH: 39-3-403, MCA
IMP: 39-3-405, MCA

REASON: The department is repealing this rule as it unnecessarily restates 39-3-405, MCA, which guarantees payment of minimum wage and overtime compensation for most employment.

24.21.1001 ON JOB TRAINING REGISTRATION POLICY found at ARM page 24-1385.

AUTH: 39-6-101, MCA
IMP: 39-6-101, MCA

REASON: The department apprenticeship policy is set forth by statute in Title 39, Chapter 6, MCA, and by federal regulation at 29 CFR Part 29. The federal regulations governing apprenticeship programs were issued in 2010. Therefore, this rule is superfluous.

24.21.1011 MINIMUM GUIDELINES FOR PROGRAMS found at ARM page 24-1387.

AUTH: 39-6-101, MCA
IMP: 39-6-101, MCA

REASON: The general guidelines for apprenticeship programs are set forth by federal law and regulation at 29 CFR Part 29, in conjunction with industry standards. The department is repealing this rule as it unnecessarily repeats criteria set forth more explicitly in law.

24.21.1501 VETERANS APPROVAL found at ARM page 24-1395.

AUTH: 39-6-101, MCA
IMP: 39-6-101, MCA

REASON: No criteria for approval of veterans' apprenticeship programs are established by administrative rule, but instead federal law and regulation outline the criteria at 29 CFR Part 29. The Office of Public Instruction has been the approving agency for many years regarding the registration of apprentices who are veterans. Consequently, there is no need for this rule.

24.30.1301 METAL AND NONMETALLIC MINING found at ARM page 24-2713.

AUTH: 50-71-311, 50-72-101 through 50-72-210, MCA
IMP: 50-71-311, 50-72-101 through 50-72-210, MCA

REASON: The department is repealing this rule because ARM 24.30.1311 adequately incorporates the U. S. standards for safety in mines other than coal mines. Therefore, this rule is not necessary.

24.30.1303 CERTIFICATION OF COAL MINE FOREMAN found at ARM page 24-2715.

AUTH: 50-71-103, MCA
IMP: 50-71-103, MCA

REASON: Because the department no longer provides testing for coal mine foremen, this rule is unnecessary. The statute formerly implemented through this rule was repealed in 2009.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Bryan Page, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624; telephone (406) 444-1605; fax (406) 444-9396; TDD (406) 444-5549; or e-mail bpage@mt.gov, and must be received no later than 5:00 p.m., March 13, 2015.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Bryan Page at the above address no later than 5:00 p.m., March 13, 2015.

8. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Based on the number of employers and employees in Montana, 25 affected persons would be the lesser number.

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 paragraph 6 above, or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Rep. Chuck Hunter, was contacted by Bryan Page by telephone on October 20, 2014, and informed of the proposed rulemaking process. Representative Hunter had no comments to offer at that time.

12. 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/ DARCEE L. MOE

Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 2, 2015

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.159.401 fees, 24.159.403	)	PROPOSED AMENDMENT AND
nonroutine applications, 24.159.906	)	REPEAL
medication aide II training program)	
curriculum, 24.159.1024,)	
24.159.1028, and 24.159.1029)	
licensed practical nurses,)	
24.159.1224, 24.159.1228, and)	
24.159.1229 registered nurses,)	
24.159.1412 initial APRN license, and)	
24.159.2021 alternative monitoring)	
track admission criteria, and the)	
repeal of ARM 24.159.1038,)	
24.159.1238, and 24.159.1428)	
inactive status licensure, 24.159.1046)	
and 25.159.1246 supervision of)	
probationary licensees, and)	
24.159.1414 APRN educational)	
requirements and qualifications)	

TO: All Concerned Persons

1. On March 5, 2015, at 10:00 a.m., a public hearing will be held in the Basement Conference Room, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing (board) no later than 5:00 p.m., on February 27, 2015, to advise us of the nature of the accommodation that you need. Please contact Cynthia Gustafson, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail nurse@mt.gov (board's email).

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

- 24.159.401 FEES (1) through (8) remain the same.
- ~~(9) The fee for inactive RN or LPN status is one half the licensure fee.~~
- (10) and (11) remain the same, but are renumbered (9) and (10).
- ~~(12) The fee for inactive APRN status is \$30 per renewal period.~~

(13) through (20) remain the same, but are renumbered (11) through (18).

AUTH: 37-1-134, 37-1-319, 37-8-202, 37-8-426, MCA

IMP: 37-1-134, 37-1-141, 37-8-202, 37-8-426, MCA

REASON: The board is amending this rule to align with the elimination of inactive status licensure rules by the repeal of ARM 24.159.1038, 24.159.1238, and 24.159.1428 in this notice. See REASON for ARM 24.159.1038. The board estimates that eliminating fees for inactive practice will affect approximately 872 currently inactive nurses, with about half of those not renewing their licenses and half renewing and remaining on active status. The board estimates an approximate increase in biennial board revenue of \$22,000.

24.159.403 NONROUTINE APPLICATIONS (1) The department may investigate license applications, and require the release of pertinent information or records, to assist the board in determining whether an applicant:

(a) meets licensure qualifications;

(b) is physically or mentally impaired through habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance to the extent that the use impairs the applicant in the performance of licensed professional duties;

(c) is impaired by mental illness or chronic physical illness that renders the applicant unable to practice nursing with reasonable skill and safety; or

(d) has past behavior constituting grounds for disciplinary action and denial or issuance of a probationary license per 37-1-137, MCA.

~~(1) (2) A~~ The board shall review and make final licensing decisions on all nonroutine application means an application submitted to the board in applications, which the applicant has are applications having one or more of the following:

~~(a) a pending or completed disciplinary action~~ license discipline, involving licensure any professional license of the applicant, in this state, or another state, territory, country, or jurisdiction; , that:

(i) is unresolved at the time of board review; or

(ii) resulted in conditions or restrictions against the license or the licensee that are not yet satisfied or discharged;

~~(b) voluntarily or involuntarily surrendered~~ voluntary or involuntary surrender of, or had the placement of restrictions placed on the applicant's:

(i) hospital privileges; ;

(ii) health maintenance organization participation, or ;

(iii) Medicaid/Medicare privileges; or

~~(c) (iv) voluntarily or involuntarily surrendered or restrictions placed on the privilege to prescribe or dispense medications;~~

~~(d) (c) diagnosis or other information indicating the applicant's a physical or mental condition or the use of alcohol or other mood-altering substances that may adversely affect the applicant's ability to practice nursing; impairment by mental illness or chronic physical illness, and for which:~~

(i) treatment is ongoing; or

(ii) symptoms currently exist;

(d) diagnosis or other information indicating the applicant's physical or mental impairment by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance;

(e) the applicant's participation in a medical assistance program, known as NAP per subchapter 20 of these rules, or in an addiction treatment program, in this or any other state, territory, or jurisdiction within the past five years;

(~~e~~) (f) the applicant's conviction for a crime directly related to or committed during the course of the applicant's licensed practice; of:

(i) a felony crime;

(ii) any crime involving the abuse of children, the elderly, or the disabled, or involving sexual abuse or assault;

(iii) any crime involving fraud, deceit, theft, or violence, or directly related to or committed during the course of the applicant's licensed practice, unless the conviction occurred more than five years ago and all court-ordered conditions have been fully satisfied or discharged; or

(~~f~~) (iv) a total of two or more misdemeanor convictions, one of which occurred involving the use or sale of drugs or alcohol within five years of the date of application;

(g) the applicant settled or was adjudged liable for a claim of malpractice; or

(h) the applicant is unable to produce documentation of licensure requirements.

(3) An application deemed "nonroutine" under (2), based upon matters involving criminal convictions related to the use or sale of drugs or alcohol, substance use disorder/chemical dependency, or mental health, shall be resolved as follows:

(a) The department may issue a license to an applicant who:

(i) has satisfied or discharged all conditions of court-ordered sanctions;

(ii) was not subject to any finding of substance use disorder/chemical dependency; and

(iii) had no more than two drug or alcohol-related misdemeanor convictions within the past five years.

(b) The department may issue a license to an applicant with a finding of substance use disorder/chemical dependency if:

(i) the applicant completed all treatment requirements at least five years ago, including but not limited to monitoring requirements of this or any other state, territory, country, or jurisdiction; and

(ii) no relapses, no criminal charges filed, and no legal interventions in the past five years, including but not limited to domestic violence or employment actions.

(c) The Nurses Assistance Program (NAP) shall review all applications that do not result in issuance of a license under (a) or (b) as follows:

(i) NAP may seek additional documentation from the applicant;

(ii) NAP may request an applicant to consent to assessments and evaluations; and

(iii) NAP shall provide recommendations and rationale to the board including:

(A) an applicant's suitability for the NAP alternative track; or

(B) the necessity for further assessments or evaluation for substance use disorder/chemical dependency or mental health issues.

(4) The department may, but is not required to, submit any routine application for board review if the department finds inconsistencies, irregularities, or other matters of concern in the application or related documentation.

~~(g) a conviction or a deferred prosecution for a felony crime;~~

~~(h) an incomplete term of probation for a criminal conviction;~~

~~(i) loss of documentation due to natural disaster or national emergency;~~

~~(j) completed nursing education in a foreign nation;~~

~~(k) completed nursing education in a branch of the U.S. military; or~~

~~(l) inconsistencies in the information contained in the application or~~

~~supporting documentation for the application.~~

~~(2) The department shall review all nonroutine applications and request additional information or documentation of the applicant, as necessary.~~

~~(3) The department, in consultation with the legal staff and in accord with board policies, shall determine whether to issue the applicant a temporary practice permit.~~

~~(4) The board may review nonroutine applications to make the final licensing decisions.~~

~~(5) An applicant whose application for licensure is denied by the board may request, in writing within 20 days of the denial, a contested case hearing before an impartial hearings examiner, in accord with the provisions of the Administrative Procedures Act, Title 2, chapter 4, part 6, MCA.~~

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-101, 37-1-131, 37-8-405, 37-8-406, 37-8-415, 37-8-416, 37-8-421, MCA

REASON: The board is amending this rule to further implement 37-1-101, MCA, which directs the department to process routine licensure applications on behalf of the licensing boards, while reserving the consideration and approval of nonroutine applications to the boards themselves. The board determined it is reasonably necessary to rework the entire rule to clearly delineate the circumstances and documentation that will require a nonroutine application's review by the board. The clearer parameters will provide better notice of the process to applicants, and will also assist department staff in determining routine from nonroutine applications.

24.159.906 MEDICATION AIDE II TRAINING PROGRAM CURRICULUM

(1) The board adopts and incorporates by reference the curriculum content outline as published in the December 2010 report of House Joint Resolution 17, regarding the utilization of medication aides in long-term care nursing homes, except Module 4: Medication Administration, Routes of Administration, (M) Suppositories because a medication aide II is not allowed to administer medications by this route. Copies of the curriculum content outline are available from the Board of Nursing, 301 S. Park Avenue, P.O. Box 200513, Helena Montana, 59620, or can be viewed on the Board of Nursing's web site at www.nurse.mt.gov.

(2) remains the same.

AUTH: 37-8-426, MCA

IMP: 37-8-423, MCA

REASON: The board received a complaint against a medication aide II who administered a suppository despite the provisions of ARM 24.159.901(1), which does not list suppository as an allowable route. The medication aide II pointed to ARM 24.159.906 and the adopted curriculum which does include this route. The board is proposing to amend (1) to clarify the board's intent that this is not an acceptable route of medication administration for a medication aide II.

24.159.1024 LPN LICENSURE BY EXAMINATION REQUIREMENTS (1)

~~The board shall administer the national council licensing examinations for practical nurse licensure by computerized adaptive testing (CAT). Each examination differs from any other administered examination.~~

~~(2) The executive director is authorized to negotiate the contract for licensing examination services.~~

~~(3) All candidates desiring to take or retake the licensing examination for practical nursing shall:~~

~~(a) make application for licensure to the board on a form provided by the board, accompanied by the fee required by the board; and~~

~~(b) make application for examination or reexamination to the national council licensing examinations on a form distributed by the board as provided by the National Council of State Boards of Nursing, accompanied by the fee required by the National Council of State Boards of Nursing.~~

~~(4) The application for licensure by examination and the examination fee shall be submitted to the board office. The application will be kept on file for one year. If the applicant fails to complete the requirements for application within one year, a new application will be required.~~

~~(5) Applicants shall have completed all educational requirements of the program and all credentials shall be received in the board office prior to being made eligible to test.~~

~~(6) A passing score on the appropriate NCLEX examination shall be required for licensure as a practical nurse. The National Council of State Boards of Nursing's panel of content experts determines the passing score.~~

~~(7) The examination score will be reported to the applicant as pass or fail.~~

~~(8) Candidates shall be notified in writing only, regarding the examination results.~~

~~(9) Candidates who pass shall receive a license to practice as a practical nurse.~~

~~(10) Candidates who fail shall receive the results of the examination and are not eligible to retest for 45 days.~~

~~(11) Each school of nursing in Montana shall receive quarterly statistical summary reports of its NCLEX results as well as state and national NCLEX results.~~

~~(12) Individual results of the examination shall not be released to anyone, unless the release is authorized by the candidate in writing.~~

~~(13) The candidate's examination results will be maintained in the application file with the department.~~

(1) An applicant for licensure as an LPN by examination shall submit to the board the required fees and a completed application, including the following information:

(a) an official transcript, sent to the board directly from the educational institution, verifying date of graduation and degree or credential conferred;

(b) proof of successful passage of NCLEX-PN;

(i) Applicants must complete all educational requirements and the board must receive all credentials prior to determining the applicant eligible to test.

(ii) Candidates failing the examination are not eligible to retest for a period determined by the testing entity, and must submit an examination retake fee.

(c) license verification and, if not in English, a certified translation, from any state, territory, or country in which the applicant holds or has held a professional license or credential;

(d) documentation, including jurisdiction and date, of any previous professional license denial or withdrawal of application; and

(e) detailed explanation and supporting documentation for each affirmative answer to background questions on application.

(2) Applications are kept on file for one year. Applicants failing to complete the application process within one year must complete a new application and submit new application fees.

(3) Internationally educated LPN license applicants must comply with requirements in ARM 24.159.1029.

AUTH: 37-1-131, 37-8-202, 37-8-415, MCA

IMP: 37-1-131, 37-8-406, 37-8-415, 37-8-416, 37-8-418, MCA

REASON: The board is amending this rule and ARM 24.159.1224 to streamline and simplify the licensure by examination process for RN and LPN applicants, and clarify requirements for department staff that process the applications. After reviewing current procedures, the board determined it is reasonably necessary to rework and reorganize the license by exam rules to align with the current 45-day testing process and update to new terminology, specifically regarding internationally educated applicants. The board notes that the amended rules utilize language from the model rules of the National Council of State Boards of Nursing.

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

24.159.1028 LPN LICENSURE BY ENDORSEMENT REQUIREMENTS (1)

An applicant for licensure by endorsement in this state shall submit to the board:

(a) a completed application including the following identifiers:

(i) social security number, birth date, and documentation of name change;

(ii) the application will be kept on file for one year. If the applicant fails to complete the application requirements for licensure by endorsement within one year, a new application will be required;

(b) evidence of meeting the standards for nursing education in this state at the time of original licensure;

~~(c) verification of initial licensure by examination with evidence of completion of a board approved program;~~

~~(d) verification and documentation of licensure status from all jurisdictions of licensure for preceding two years;~~

~~(e) practical nurse applicants shall present evidence of having passed a licensure examination as follows:~~

~~(i) a passing score on a state-constructed licensure examination prior to the use of the state board test pool examination in the original state of licensure; or~~

~~(ii) a passing score on a NCLEX-PN examination taken after September 1988; or~~

~~(iii) a minimum scaled score of 350 on a NCLEX-PN examination taken prior to September 1988;~~

~~(f) the required fees for licensure by endorsement as specified in ARM 24.159.401; and~~

~~(g) if the applicant's education was obtained in a foreign country, the applicant must also meet the conditions of ARM 24.159.1029.~~

~~(2) The board may, on a case-by-case basis, issue a license to an applicant for licensure by endorsement whose license is under investigation or in disciplinary action of a board in another jurisdiction or to an applicant who is under investigation for a felony criminal offense.~~

~~(3) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice practical nursing pursuant to the provisions of ARM 24.159.1021.~~

~~(4) The board shall issue a license based on satisfactory completion of the requirements.~~

~~(1) An applicant for licensure as an LPN by endorsement shall submit to the board the required fees and a completed application, including the following information:~~

~~(a) license verification and, if not in English, a certified translation, from the state, territory, or country in which the applicant currently holds an active LPN license in good standing;~~

~~(b) license verification and, if not in English, a certified translation, from any state, territory, or country in which the applicant has held any professional license or credential, including verification of applicant's original licensure by examination;~~

~~(c) documentation, including jurisdiction and date, of any previous professional license denial or withdrawal of application; and~~

~~(d) detailed explanation and supporting documentation for each affirmative answer to background questions on application.~~

~~(2) Applications are kept on file for one year. Applicants failing to complete the application process within one year must complete a new application and submit new application fees.~~

AUTH: 37-1-131, 37-8-202, 37-8-415, MCA

IMP: 37-1-131, 37-1-304, 37-8-415, 37-8-418, MCA

REASON: The board is reworking and reorganizing this rule and ARM 24.159.1228 to align with and clarify current department licensure processes. It is reasonably

necessary to update the licensure by endorsement rules for RNs and LPNs to clearly set forth the application requirements and facilitate online application processes.

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

24.159.1029 FOREIGN EDUCATED APPLICANTS FOR PRACTICAL NURSE LPN LICENSURE BY EXAMINATION FOR INTERNATIONALLY EDUCATED APPLICANTS REQUIREMENTS

~~(1) For purposes of this rule, "foreign educated" applicants are those individuals whose nursing education credential was conferred by an educational institution located outside the United States or its jurisdictions. The term includes, but is not limited to, applicants or candidates who studied nursing in the United States through either a distance learning program offered by or through a foreign educational institution or whose nursing education involved a collaboration between a foreign educational institution and an educational institution in the United States, so long as the credential was conferred by the foreign educational institution.~~

~~(2) Foreign educated applicants for practical nurse licensure by examination must:~~

- ~~(a) fulfill the requirements of ARM 24.159.1024;~~
- ~~(b) pass the Montana licensing examination (i.e., NCLEX);~~
- ~~(c) provide a course-by-course evaluation, verifying the applicant's nursing education credentials and comparing the applicant's nursing education with the U.S. nursing education standards. The board may deny licensure to a foreign educated applicant if denial is deemed by the board to be warranted by the course-by-course evaluation report; and~~

~~(d) successfully complete an English proficiency examination recognized by the board-approved foreign education evaluator, except as provided in (4).~~

~~(3) Foreign educated applicants for practical nurse licensure by endorsement from another state of the United States must:~~

- ~~(a) fulfill the requirements of ARM 24.159.1028;~~
- ~~(b) provide verification of licensure in good standing in the other state;~~
- ~~(c) provide a course-by-course evaluation report prepared by a board-approved foreign education evaluator verifying the applicant's nursing education credentials and comparing the applicant's nursing education with the U.S. nursing education standards. The board may deny licensure to a foreign educated applicant if denial is warranted by the course-by-course evaluation report; and~~

~~(d) successfully complete an English proficiency examination recognized by the board-approved foreign education evaluator, except as provided in (4).~~

~~(4) The provisions of (2)(d) and (3)(d) do not apply if the foreign educated applicant graduated from a nursing program at a college, university, or professional nurses' training school in one of the following countries:~~

- ~~(a) Australia;~~
- ~~(b) Canada (except Quebec);~~
- ~~(c) Ireland;~~
- ~~(d) New Zealand;~~
- ~~(e) Tobago;~~

- (f) ~~Trinidad; or~~
- (g) ~~United Kingdom.~~

~~(5) A foreign education evaluator may apply to the board to become a board-approved foreign education evaluator for purposes of this rule. Approval is left to the sole discretion of the board on a case-by-case basis. If a foreign education evaluator is approved by the board, it will be added to a list maintained at the board office. Each board-approved foreign education evaluator must maintain current contact information at the board office as requested by the board, and is subject to removal by the board upon review.~~

(1) An internationally educated applicant for licensure as an LPN by examination shall submit to the board the required fees and a completed application, including the following information:

(a) Results of a credentials review by a credentials review agency or another board of nursing that verifies the equivalency of the international LPN education program to LPN education programs in the United States;

(b) proof of successful passage of NCLEX-PN;

(i) Applicants must complete all educational requirements and the board must receive all credentials prior to determining the applicant eligible to test.

(ii) Candidates failing the examination are not eligible to retest for a period determined by the testing entity, and must submit an examination retake fee.

(c) license verification and, if not in English, a certified translation, from any state, territory, or country in which the applicant holds or has held a professional license or credential;

(d) documentation, including jurisdiction and date, of any previous professional license denial or withdrawal of application; and

(e) detailed explanation and supporting documentation for each affirmative answer to background questions on application.

(2) Applications are kept on file for one year. Applicants failing to complete the application process within one year must complete a new application and submit new application fees.

AUTH: 37-1-131, 37-8-202, 37-8-415, MCA

IMP: 37-1-131, ~~37-8-101, 37-8-405~~, 37-8-415, 37-8-416, 37-8-418, MCA

REASON: The board is amending this rule and ARM 24.159.1229 to update, reorganize, and simplify the requirements for internationally educated RN and LPN applicants by examination. The board amended these rules in 2010 to allow for education evaluations provided by entities other than the Commission on Graduates of Foreign Nursing Schools (CGFNS). The board has now determined that further amendments are reasonably necessary to accept education evaluations from those boards of nursing that are large enough and have sufficient resources to complete adequate and competent education reviews, such as in California and New York.

The board is also amending these rules to remove the requirement for an English proficiency examination, after concluding that such examinations offer no guarantee of an applicant's language proficiency.

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

24.159.1224 RN LICENSURE BY EXAMINATION REQUIREMENTS (1)

~~The board shall administer the national council licensing examinations for registered nurse licensure by computerized adaptive testing (CAT). Each examination differs from any other administered examination.~~

~~(2) The executive director is authorized to negotiate the contract for licensing examination services.~~

~~(3) All candidates desiring to take or retake the licensing examination for registered nursing shall:~~

~~(a) make application for licensure or reexamination to the board on a form provided by the board, accompanied by the fee required by the board; and~~

~~(b) make application for examination or reexamination to the national council licensing examinations on a form distributed by the board as provided by the National Council of State Boards of Nursing, accompanied by the fee required by the National Council of State Boards of Nursing.~~

~~(4) The application for licensure by examination and the examination fee shall be submitted to the board office. The application will be kept on file for one year. If the applicant fails to complete the requirements for application within one year, a new application will be required.~~

~~(5) Applicants shall have completed all educational requirements of the program and all credentials shall be received in the board office prior to being made eligible to test.~~

~~(6) A passing score on the appropriate NCLEX examination shall be required for licensure as a registered nurse. The National Council of State Boards of Nursing's panel of content experts determines the passing score.~~

~~(7) The examination score will be reported to the applicant as pass or fail.~~

~~(8) Candidates shall be notified in writing only, regarding the examination results.~~

~~(9) Candidates who pass shall receive a license to practice as a registered nurse.~~

~~(10) Candidates who fail shall receive the results of the examination and are not eligible to retest for 45 days.~~

~~(11) Each school of nursing in Montana shall receive quarterly statistical summary reports of its NCLEX results as well as state and national NCLEX results.~~

~~(12) Individual results of the examination shall not be released to anyone, unless the release is authorized by the candidate in writing.~~

~~(13) The candidate's examination results will be maintained in the application file with the department.~~

(1) An applicant for licensure as an RN by examination shall submit to the board the required fees and a completed application, including the following information:

(a) an official transcript, sent to the board directly from the educational institution, verifying date of graduation and degree or credential conferred;

(b) proof of successful passage of NCLEX-RN;

(i) Applicants must complete all educational requirements and the board must receive all credentials prior to determining the applicant eligible to test.

(ii) Candidates failing the examination are not eligible to retest for a period determined by the testing entity, and must submit an examination retake fee.

(c) license verification and, if not in English, a certified translation, from any state, territory, or country in which the applicant holds or has held a professional license or credential;

(d) documentation, including jurisdiction and date, of any previous professional license denial or withdrawal of application; and

(e) detailed explanation and supporting documentation for each affirmative answer to background questions on application.

(2) Applications are kept on file for one year. Applicants failing to complete the application process within one year must complete a new application and submit new application fees.

(3) Internationally educated RN license applicants must comply with requirements in ARM 24.159.1229.

AUTH: 37-1-131, 37-8-202, 37-8-405, MCA

IMP: 37-1-131, 37-1-134, 37-8-405, 37-8-406, 37-8-416, MCA

REASON: See REASON for ARM 24.159.1024.

24.159.1228 RN LICENSURE BY ENDORSEMENT REQUIREMENTS (1)

~~An applicant for licensure by endorsement in this state shall submit to the board:~~

~~(a) a completed application including the following identifiers:~~

~~(i) social security number, birth date, and documentation of name change;~~

~~(ii) the application will be kept on file for one year. If the applicant fails to complete the application requirements for licensure by endorsement within one year, a new application will be required;~~

~~(b) evidence of meeting the standards for nursing education in this state at the time of original licensure;~~

~~(c) verification of initial licensure by examination with evidence of completion of a board approved program;~~

~~(d) verification and documentation of licensure status from all jurisdictions of licensure for preceding two years;~~

~~(e) registered nurse applicants shall present evidence of having passed a licensure examination as follows:~~

~~(i) a passing score on a state-constructed licensure examination prior to the use of the state board test pool examination in the original state of licensure; or~~

~~(ii) 350 on each part of the state board test pool examination for registered nurses; or~~

~~(iii) a passing score on a NCLEX-RN examination taken after September 1988; or~~

~~(iv) a minimum scaled score of 1600 on a NCLEX-RN examination taken prior to September 1988;~~

~~(f) the required fees for licensure by endorsement as specified in ARM 24.159.401; and~~

~~(g) if the applicant's education was obtained in a foreign country, the applicant must also meet the conditions of ARM 24.159.1229.~~

~~(2) The board may, on a case-by-case basis, issue a license to an applicant for licensure by endorsement whose license is under investigation or in disciplinary action of a board in another jurisdiction or to an applicant who is under investigation for a felony criminal offense.~~

~~(3) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice registered nursing pursuant to the provisions of ARM 24.159.1221.~~

~~(4) The board shall issue a license based on satisfactory completion of the requirements.~~

(1) An applicant for licensure as an RN by endorsement shall submit to the board the required fees and a completed application, including the following information:

(a) license verification and, if not in English, a certified translation, from the state, territory, or country in which the applicant currently holds an active RN license in good standing;

(b) license verification and, if not in English, a certified translation, from any state, territory, or country in which the applicant has held any professional license or credential, including verification of applicant's original licensure by examination;

(c) documentation, including jurisdiction and date, of any previous professional license denial or withdrawal of application; and

(d) detailed explanation and supporting documentation for each affirmative answer to background questions on application.

(2) Applications are kept on file for one year. Applicants failing to complete the application process within one year must complete a new application and submit new application fees.

AUTH: 37-1-131, 37-8-202, 37-8-405, MCA

IMP: 37-1-131, 37-1-134, 37-1-304, 37-8-405, MCA

REASON: See REASON for ARM 24.159.1028.

24.159.1229 FOREIGN EDUCATED APPLICANTS FOR REGISTERED NURSE RN LICENSURE BY EXAMINATION FOR INTERNATIONALLY EDUCATED APPLICANTS REQUIREMENTS

~~(1) For purposes of this rule, "foreign educated" applicants are those individuals whose nursing education credential was conferred by an educational institution located outside the United States or its jurisdictions. The term includes but is not limited to applicants who studied nursing in the United States through either a distance learning program offered by or through a foreign educational institution or whose nursing education involved a collaboration between a foreign educational institution and an educational institution in the United States, so long as the credential was conferred by the foreign educational institution.~~

~~(2) Foreign educated applicants for registered nurse licensure by examination must:~~

~~(a) fulfill the requirements of ARM 24.159.1224;~~

~~(b) pass the Montana licensing examination (i.e., NCLEX); and~~

~~(c) be certified by a board-approved foreign education evaluator as having successfully completed:~~

~~(i) an English language proficiency examination recognized by the board-approved foreign education evaluator, except as provided under (4);~~

~~(ii) a qualifying examination, which may be referred to as a NCLEX predictor exam or screening exam; and~~

~~(iii) a credentials review course-by-course evaluation performed by the board-approved foreign education evaluator verifying the applicant's nursing education credentials and comparing the applicant's foreign nursing education with the U.S. nursing education standards. The board may deny licensure to a foreign educated applicant if denial is deemed by the board to be warranted by the course-by-course report.~~

~~(3) Foreign educated applicants for registered nurse licensure by endorsement from another state of the United States must:~~

~~(a) fulfill the requirements of ARM 24.159.1228;~~

~~(b) have passed the NCLEX or state board test pool exam in the other state;~~

~~(c) provide verification of licensure in good standing in the other state;~~

~~(d) provide a course-by-course evaluation verifying the applicant's nursing education credentials and comparing the applicant's foreign nursing education with the U.S. nursing education standards. The board may deny licensure to a foreign educated applicant if denial is warranted by the course-by-course evaluation report; and~~

~~(e) successfully complete an English proficiency examination recognized by the board-approved foreign education evaluator.~~

~~(4) The provisions of (2)(c)(i) and (3)(e) do not apply if the foreign educated applicant graduated from a nursing program at a college, university, or professional nurses' training school in one of the following countries:~~

~~(a) Australia;~~

~~(b) Canada (except Quebec);~~

~~(c) Ireland;~~

~~(d) New Zealand;~~

~~(e) Tobago;~~

~~(f) Trinidad; or~~

~~(g) United Kingdom.~~

~~(5) A foreign education evaluator may apply to the board to become a board-approved foreign education evaluator for purposes of this rule. Approval is left to the sole discretion of the board on a case-by-case basis. If a foreign education evaluator is approved by the board, it will be added to a list maintained at the board office. Each board-approved foreign education evaluator must maintain current contact information at the board office as requested by the board and is subject to removal by the board upon review.~~

(1) An internationally educated applicant for licensure as an RN by examination shall submit to the board the required fees and a completed application, including the following information:

(a) Results of a credentials review by a credentials review agency or another board of nursing that verifies the equivalency of the international RN education program to RN education programs in the United States;

(b) proof of successful passage of NCLEX-RN;

(i) Applicants must complete all educational requirements and the board must receive all credentials prior to determining the applicant eligible to test.

(ii) Candidates failing the examination are not eligible to retest for a period determined by the testing entity, and must submit an examination retake fee.

(c) license verification and, if not in English, a certified translation, from any state, territory, or country in which the applicant holds or has held a professional license or credential;

(d) documentation, including jurisdiction and date, of any previous professional license denial or withdrawal of application; and

(e) detailed explanation and supporting documentation for each affirmative answer to background questions on application.

(2) Applications are kept on file for one year. Applicants failing to complete the application process within one year must complete a new application and submit new application fees.

AUTH: 37-1-131, 37-8-202, 37-8-405, MCA

IMP: 37-1-131, 37-1-134, 37-8-101, 37-8-405, 37-8-406, 37-8-415, MCA

REASON: See REASON for ARM 24.159.1029.

24.159.1412 APPLICATION FOR INITIAL APRN LICENSURE (1) and (2) remain the same.

(3) The applicant shall request that an official transcript, from an accredited graduate-level education program, be sent to the board directly from the applicant's APRN program to verify the date of completion and degree conferred.

(4) through (8) remain the same.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-1-134, 37-8-202, 37-8-409, MCA

REASON: The board is amending this rule to clarify that applicants must obtain official transcripts directly from their accredited graduate-level program. The board concluded this amendment is necessary to align with provisions of ARM 24.159.1418 and 24.159.1427, and the repeal of ARM 24.159.1414.

24.159.2021 ADMISSION CRITERIA - ALTERNATIVE MONITORING TRACK (1) through (2)(d) remain the same.

~~(e) has diverted controlled substances; and~~

(f) remains the same but is renumbered (e).

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: The board has discovered instances in which a licensee may have diverted controlled substances but did not, in fact, cause patient harm. The board notes that this may occur, for example, when a licensee signs out a double dose of a

medication, knowing that one dose is sufficient to give therapeutic effects to the patient, and then diverts the second dose. Currently, licensees suspected of diverting controlled substances are not eligible for placement in the alternative monitoring track and must enter the disciplinary monitoring track. The board concluded it is reasonably necessary to delete (2)(e) to allow the placement of these licensees in the alternative monitoring track on the recommendation of the NAP consultant.

4. The rules to be repealed provide as follows:

24.159.1038 INACTIVE STATUS found at ARM page 24-16578.

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA

IMP: 37-1-131, 37-1-319, MCA

REASON: The board is eliminating inactive status licensure for nurses through the repeal of ARM 24.159.1038, 24.159.1238, and 24.159.1428. The board examined other states' regulations, and found that most states do not have inactive license status for RNs, LPNs, or APRNs. Because inactive licensees must comply with all continuing education requirements and can stay inactive for a very limited period of time, but are not able to practice nursing, the board concluded there is no benefit in distinguishing between active and inactive licensees in board rules. The board further notes that tracking inactive licensees as a separate status increases costs that are paid from license and renewal fees, and those on inactive status pay lower renewal fees than licensees renewing active.

The board concluded that the requirements in the inactive status rules for continuing education and "reestablishing qualifications" are not clear and provide no meaningful distinction between the statuses. Individuals are either licensed to practice nursing in Montana, or they are not, and the board believes maintaining rules specific to those with inactive licenses, without imposing minimum practice requirements on all those whose licenses are active, is without effect. The board determined it is reasonably necessary to eliminate the rules that create a little-used distinction in name only, and which are not relevant to assuring good nursing practice or public safety.

24.159.1046 SUPERVISION OF PROBATIONARY LICENSEES found at ARM page 24-16580.

AUTH: 37-1-136, 37-1-319, 37-8-202, MCA

IMP: 37-1-136, 37-1-319, 37-8-202, MCA

REASON: Recently in approving final stipulations for licensees under probation, the board concluded that ARM 24.159.1046 and 24.159.1246 mandate the conditions of probation and limit the settings in which nurses under probation may work. The board is repealing these rules to allow more discretion in the types of probationary licenses that the board can grant to further ensure public safety and better monitor licensees with probationary licenses.

24.159.1238 INACTIVE STATUS found at ARM page 24-16623.

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA

IMP: 37-1-131, 37-1-319, MCA

REASON: See REASON for ARM 24.159.1038.

24.159.1246 SUPERVISION OF PROBATIONARY LICENSEES found at ARM page 24-16629.

AUTH: 37-1-136, 37-1-319, 37-8-202, MCA

IMP: 37-1-136, 37-1-319, 37-8-202, MCA

REASON: See REASON for ARM 24.159.1046.

24.159.1414 EDUCATIONAL REQUIREMENTS AND QUALIFICATIONS FOR APRN found at ARM page 24-16662.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-202, 37-8-409, MCA

REASON: The board determined it is reasonably necessary to repeal this rule since accreditation programs and standards change over time, and it is costly and unnecessary to amend this rule with each variation. Further, the board views this rule as redundant and unnecessary when considered with the provisions of ARM 24.159.1412, 24.159.1418, and 24.159.1427.

24.159.1428 INACTIVE APRN STATUS found at ARM page 24-16671.

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA

IMP: 37-1-131, 37-1-319, MCA

REASON: See REASON for ARM 24.159.1038.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., March 13, 2015.

6. An electronic copy of this notice of public hearing is available at www.nurse.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be

considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

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

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.159.401, 24.159.403, 24.159.906, 24.159.1024, 24.159.1028, 24.159.1029, 24.159.1224, 24.159.1228, 24.159.1229, 24.159.1412, and 24.159.2021 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.159.1038, 24.159.1046, 24.159.1238, 25.159.1246, 24.159.1414, and 24.159.1428 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; facsimile (406) 841-2305; or e-mail to nurse@mt.gov.

10. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
HEATHER O'HARA, RN, PRESIDENT

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 2, 2015

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.23.301 pertaining to licensee	)	AMENDMENT
assessments)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

To: All Concerned Persons

1. On March 16, 2015, the Department of Livestock proposes to amend 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 March 4, 2015, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 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: cmackay@mt.gov.

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

32.23.301 LICENSEE ASSESSMENTS (1) Pursuant to 81-23-202, MCA, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act ~~during the current fiscal year beginning July 1 and ending June 30~~, are hereby levied upon the Milk Control Act licensees of this department.

(a) A fee of ~~\$0.06~~ \$0.08 per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of all milk subject to the Milk Control Act produced and sold by a producer-distributor.

(b) A fee of ~~\$0.06~~ \$0.08 per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of all milk subject to the Milk Control Act sold in this state by a distributor home based in another state. Said fee is to be paid either by the foreign distributor or his jobber who imports such milk for sale within this state.

(c) A fee of ~~\$0.025~~ \$0.04 per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of all milk subject to the Milk Control Act sold by a producer.

(d) A fee of ~~\$0.025~~ \$0.04 per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor.

(e) A fee of \$0.155 per hundredweight per month, with a minimum of \$50.00 per month, whichever is greater, or a maximum of \$1,050.00 per month, on the

volume of all classes of milk produced and sold by a person licensed by the department, to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department.

(i) This fee, pursuant to 81-23-202(4)(a), MCA, must be paid quarterly before January 15, April 15, July 15, and October 15 for the prior quarter of each year.

AUTH: 81-1-102, 81-23-104, 81-23-202, MCA

IMP: 81-1-102, 81-23-103, 81-23-202, MCA

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

- to raise sufficient revenue to provide for the administration of Title 81, chapter 23, MCA, as proposed for Fiscal Year 2016 and Fiscal Year 2017;
- to equalize the combined rates assessed on producers and in-state distributors with the rates assessed on producer-distributors and foreign distributors.
- to increase the cash balance of the related special revenue fund to ensure solvency;
- to ensure assessments are commensurate with the costs as required by 81-1-102(2), MCA; and
- to identify 81-1-102, MCA, in the authorizing and implementing statutes.

The increased fees charged by the Milk Control Bureau potentially will affect approximately 140 businesses that may be subject to assessments. The cumulative amount of the assessment rate increase will be \$107,000 based on applying the proposed rates to estimates of production and distribution by the different classes of licensed businesses.

4. This amendment shall be applied effective July 1, 2015.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to Christian Mackay, 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., March 12, 2015.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make 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., March 12, 2015.

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 who are 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 14, based upon there being approximately 140 businesses licensed by the Milk Control Bureau.

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

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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 of the above-referenced rule will not significantly and directly impact small businesses.

DEPARTMENT OF LIVESTOCK

BY: /s/ Sherry Rust
Sherry Rust
Rule Reviewer

BY: /s/ Christian Mackay
Christian Mackay
Executive Officer
Board of Livestock
Department of Livestock

Certified to the Secretary of State February 2, 2015

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 38.5.2202 and 38.5.2302) AMENDMENT
pertaining to pipeline safety)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On March 26, 2015, the Department of Public Service Regulation proposes to amend the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on March 13, 2015, to advise us of the nature of the accommodation that you need. Please contact Aleisha Solem, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601; telephone (406) 444-6170; TTD (406) 444-6199; fax (406) 444-7618; or e-mail asolem@mt.gov.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before October 30, ~~2013~~2014. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before October 30, ~~2013~~2014. A copy of the referenced CFRs is available from the United States Department of Transportation, Office of Pipeline

Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

REASON: Amendment of ARM 38.5.2202 and 38.5.2302 (annual update) is necessary to allow the department to administer the most recent version of federal rules applicable in the department's administration of all federal aspects of Montana's pipeline safety programs. A copy of the referenced regulations may be reviewed at the department's offices or are available online at <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=3e139b8fe42796ca0335e22c595fab2a&r=PART&n=49y3.1.1.1.7>.

4. Concerned persons may submit their written data, views, or arguments to Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail asolem@mt.gov and must be received no later than 5:00 p.m. March 16, 2015.

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

6. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Aleisha Solem, Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, or e-mail jkraske@mt.gov to be received no later than 5:00 p.m., March 16, 2015.

7. If the PSC receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 2 entities based on the 27 entities affected.

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

person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Department of Public Service Regulation, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Aleisha Solem at (406) 444-7618, e-mailed to ASolem@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

9. An electronic copy of this proposal notice is available on the PSC's web site and also through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register. However, the PSC advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. 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.

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

/s/ JUSTIN KRASKE
JUSTIN KRASKE
Rule Reviewer

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

Certified to the Secretary of State February 2, 2015.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 38.5.2102 pertaining to utility) AMENDMENT
electricity voltage)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On March 26, 2015, the Department of Public Service Regulation proposes to amend the above-stated rule.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on March 13, 2015, to advise us of the nature of the accommodation that you need. Please contact Aleisha Solem, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601; telephone (406) 444-6170; TTD (406) 444-6199; fax (406) 444-7618; or e-mail asolem@mt.gov.

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

38.5.2102 ELECTRIC UTILITY NOMINAL VOLTAGE AND PERMISSIBLE RANGE OF VARIANCE (1) The standards of product and service for each public utility providing electric service subject to the jurisdiction of the commission shall, whether established by ordered tariff provision or administrative rule, allow for a nominal voltage and permissible range of variation as specified in American National Standards Institute (ANSI) C84.1 ~~2006~~2011. A copy of ANSI C84.1 may be obtained from the American National Standards Institute, Operations, 25 West 43rd Street, 4th Floor, New York, New York 10036, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

(2) This rule shall not apply:

(a) to transmission systems not used to directly serve customers;

(b) where customers specifically request a voltage other than standard nominal system voltages as specified in ANSI C84.1; or

(c) in instances where voltage is in excess of 34,500 volts.

AUTH: 69-3-103, MCA

IMP: 69-3-108, MCA

REASON: Amendment of ARM 38.5.2102 is necessary to allow the department to administer the most recent version of the ANSI's nominal voltage and permissible range of variation standards.

4. Concerned persons may submit their written data, views, or arguments to Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail asolem@mt.gov and must be received no later than 5:00 p.m. March 16, 2015.

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

6. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Aleisha Solem, Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, or e-mail jkraske@mt.gov to be received no later than 5:00 p.m., March 16, 2015.

7. If the PSC receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 2 entities based on the 27 entities affected.

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes that name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Department of Public Service Regulation, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Aleisha Solem at (406) 444-7618, e-mailed to asolem@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

9. An electronic copy of this proposal notice is available on the PSC's web site and also through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register. However, the PSC advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. In addition, although the Secretary of State works to keep its

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

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

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

/s/ JUSTIN KRASKE
JUSTIN KRASKE
Rule Reviewer

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

Certified to the Secretary of State February 2, 2015.

BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 2.55.320 pertaining to)
classifications of employments)

TO: All Concerned Persons

1. On December 11, 2014, the Montana State Fund published MAR Notice No. 2-55-46 pertaining to the proposed amendment of the above-stated rule at page 2904 of the 2014 Montana Administrative Register, Issue Number 23.

2. The Montana State Fund has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Nancy Butler
Nancy Butler, General Counsel
Rule Reviewer

/s/ Elizabeth Best
Elizabeth Best
Chair of the Board

/s/ Michael P. Manion
Michael P. Manion, Chief Legal Counsel
and Rule Reviewer

Certified to the Secretary of State February 2, 2015.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF REPEAL
8.94.3708, 8.94.3709, 8.94.3710,)	
8.94.3711, 8.94.3712, 8.94.3713,)	
8.94.3714, 8.94.3715, 8.94.3716,)	
8.94.3717, 8.94.3718, 8.94.3719,)	
8.94.3720, 8.94.3721, 8.94.3722,)	
8.94.3723, 8.94.3724, 8.94.3725)	
relating to the administration of the)	
CDBG Program)	

TO: All Concerned Persons

1. On December 24, 2014, the Department of Commerce published MAR Notice No. 8-94-127 pertaining to the proposed repeal of the above-stated rules at page 3026 of the 2014 Montana Administrative Register, Issue Number 24.
2. The department has repealed the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ G. Martin Tuttle
 G. MARTIN TUTTLE
 Rule Reviewer

/s/ Douglas Mitchell
 DOUGLAS MITCHELL
 Deputy Director
 Department of Commerce

Certified to the Secretary of State January 30, 2015.

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

In the matter of the amendment of) NOTICE OF AMENDMENT,
ARM 24.168.2301 unprofessional) ADOPTION, AND REPEAL
conduct, the adoption of NEW RULE I)
nonroutine applications, and the)
repeal of ARM 24.168.2115 renewals)

TO: All Concerned Persons

1. On October 9, 2014, the Board of Optometry (board) published MAR Notice No. 24-168-41 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 2350 of the 2014 Montana Administrative Register, Issue No. 19.

2. On November 5, 2014, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. No comments were received by the November 14, 2014, deadline.

3. The board has amended ARM 24.168.2301 exactly as proposed.

4. The board has adopted NEW RULE I (24.168.407) exactly as proposed.

5. The board has repealed ARM 24.168.2115 exactly as proposed.

BOARD OF OPTOMETRY
DOUG KIMBALL, PRESIDENT

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 2, 2015

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 37.40.830 pertaining to)
updating hospice reimbursement fee)
schedules to reflect new federal rates)

TO: All Concerned Persons

1. On November 20, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-701 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2812 of the 2014 Montana Administrative Register, Issue Number 22.

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

3. No comments or testimony were received.

4. The department intends to apply this rule adoption retroactively to October 1, 2014. The implementation date is consistent with the federal approval of the hospice reimbursement rate fee increases and the effective dates of the stated promulgated regulations. If any provider would experience a decrease in hospice rates, the decrease will not be applied retroactively. It will begin on the final adoption of this proposed rule. Therefore, there will be no retroactive negative impact to any hospice program.

/s/ Valerie A. Bashor
Valerie A. Bashor, Attorney
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State February 2, 2015.

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 37.86.101, 37.86.105, and)
37.86.202 pertaining to the extension)
of enhanced reimbursement for)
primary providers)

TO: All Concerned Persons

1. On December 24, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-703 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 3041 of the 2014 Montana Administrative Register, Issue Number 24.

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

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

COMMENT #1: One commenter expressed support for the proposed amendment to extend the time period for enhanced payment of primary care practitioners for primary care services.

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

4. The department intends to apply these rules retroactively to January 1, 2015. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Susan Callaghan
Susan Callaghan, Attorney
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State February 2, 2015.

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

IN THE MATTER OF the Petition of) REGULATORY DIVISION
Bull Mountain Sanitation LLC for)
Declaratory Ruling Concerning) DOCKET NO. T-14.23.DR
Musselshell County under 69-12-)
102(1)(c) – whether carriers serving)
rural areas are exempt from PSC)
jurisdiction)

DECLARATORY RULING

BACKGROUND

1. On September 26, 2014, Bull Mountain Sanitation, LLC (Bull Mountain) filed a *Petition for Declaratory Ruling* (Petition) with the Montana Public Service Commission (Commission) requesting a ruling that, pursuant to Mont. Code Ann. § 69-12-102(1)(c) (2013), Bull Mountain's garbage hauling service in Musselshell County is exempt from Class D motor carrier certificate requirements.

2. The Commission issued a *Notice of Petition and Opportunity to Comment* on September 30, 2014. The Commission received written comments from Allied Waste Services of North America LLC dba Republic Services of Montana (Republic); the Montana Solid Waste Contractors Association; City County Sanitation, Inc. dba Tri-County Disposal of Helena; McGree Trucking Inc. of Butte-Silver Bow, Jefferson and Powell counties; Butte Services, Inc. of Thompson Falls; and Peter P. DelGiudice and Rebecca L. DelGiudice dba B&P Services of Plains. All of the commenters opposed the Petition.

3. Mont. Code Ann. § 69-12-102(1)(c) provides an exemption from Commission motor carrier requirements for:

the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village with a population of less than 500 persons, as determined by the commission.

4. Bull Mountain asserts that it is exempt from Class D motor carrier certificate requirements because it provides garbage hauling service to communities of less than 500 persons. According to the Petition, Bull Mountain hauls garbage from residences, farms, and ranches in Musselshell County to designated drop-off sites in Roundup, also in Musselshell County. The Petition states that Roundup is the only town in Musselshell County that has a population over 500, according to the 2010 census. Bull Mountain does not provide garbage hauling service within the city

limits of Roundup. Bull Mountain's customers are located in the unincorporated rural areas of Musselshell County and in the town of Melstone, which has a population of 96.

5. Bull Mountain argues that the plain language of the statute provides an exemption for garbage haulers that serve communities of less than 500 persons. Bull Mountain stated it does not provide service to designated populations of 500 or more. According to Bull Mountain, while "village" is not defined in statute, the company does not serve any Census Designated Place (CDP)¹ with a population of 500 or more.

CONCLUSIONS OF LAW

6. When interpreting a statute, the Commission's purpose is to implement the intent of the legislature. If legislative intent can be determined from the plain language of the statute, the plain language controls. *In re Co-Guardianship of D. A., Jr.*, 2004 MT 302 ¶ 14, 323 Mont. 442, 100 P.3d 650. "If the language is plain, unambiguous, direct, and certain, the statute speaks for itself and there is no need to resort to a legislative history or other means of interpretation." *Palmer v. Hart* (1982), 201 Mont. 526, 530, 655 P.2d 965, 967. In this case, the plain language of the statute requires that, in order to be exempt, a carrier must transport garbage or household goods in a city, town, or village with fewer than 500 persons.

7. Bull Mountain stated in its Petition that most of its customers "are not located in any type of town or village" and that the only town in which it transports garbage is Melstone. Pet. at pp. 5-6.

8. The Commission finds that the exemption does not apply to Bull Mountain's garbage hauling service, with the exception of its service in the town of Melstone, because most of Bull Mountain's business is not conducted in a city, town, or village of any size. Bull Mountain has met the required showing that Melstone is a town with a population of less than 500. Therefore, Melstone falls under the exemption. The statutory exemption plainly reads that it applies when a carrier transports household goods or garbage in a city, town, or village of less than 500 persons. It does not say that it applies when a carrier does not transport household goods or garbage in a city, town, or village of 500 persons or more. Where the statute speaks for itself, there is nothing left to construe. *Curtis v. Dist. Ct. of 21st Jud. Dist.* (1994), 266 Mont. 231, 235, 879 P.2d 1164, 1166.

9. The facts on which Bull Mountain requests the Commission to base its ruling include only incidental references to the meaning of the word "village." The proposition of law advocated by Bull Mountain is that the exemption applies because Bull Mountain does not transport garbage in cities, towns, or villages with

¹ "Census Designated Places are delineated to provide data for settled concentrations of population that are identifiable by name but are not legally incorporated under the laws of the state in which they are located." Exhibit D to the Petition, U.S. Census Bureau's "Geographic Terms and Concepts," 2010 Census, p. A-21.

populations of 500 or more. Bull Mountain does not argue that the rural areas it serves are cities, towns, or villages. Bull Mountain has presented no facts to show that it is transporting garbage in any other cities, towns, or villages with populations of less than 500 persons (except for Melstone) and should thus be exempt from Commission regulation.

10. Bull Mountain introduced the concept of CDPs in its Petition, and the fact that it served three of them, as support for the fact that Musselshell County is rural in nature, not as support for an argument it did not make that CDPs are equivalent in some way to cities, towns, or villages. Pet. at pp. 3, 5.

11. In decades of agency practice, the Commission has interpreted its statutory authority to extend to the transportation of household goods and garbage in the manner supported by the commenters, rather than in the manner advocated by Bull Mountain. There are numerous examples of regulated Class D and household goods carriers whose authority includes rural areas such as those Bull Mountain argues it can serve without obtaining Commission authority. Two examples include Republic and Disposal Service of Montana who have sought and obtained Commission authority to provide service in the same areas of Musselshell County that Bull Mountain asserts it may serve without obtaining Commission authority.

12. If the 1947 legislature had intended, when it added this exemption to Chapter 12, to broadly deregulate the transportation of household goods and garbage in all of the rural areas of the state as advocated by Bull Mountain, it would have done so in a straightforward manner, not by use of an exemption. Exemptions to statutes should be construed narrowly. *Menlo Service Corp. v. U.S.*, 765 F.2d 805, 810 (9th Cir. 1985) citing *Donovan v. Nekton, Inc.*, 703 F.2d 1148, 1151 (9th Cir. 1983).

13. The Petition presents no facts that CDPs are villages, and no argumentation as to what a village is. The term is undefined in Title 69 and used only sparingly elsewhere in the Montana Code Annotated. Given the lack of facts and argumentation, the Commission declines to issue a declaratory order defining "village."

14. The Commission declines to issue the declaratory ruling sought by Bull Mountain. The Commission only grants an exemption to serving Melstone, as it is a town with less than 500 people, and is therefore subject to the exemption.

DONE AND DATED this 9th day of December, 2014, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

/s/ W.A. (BILL) GALLAGHER
W.A. (BILL) GALLAGHER
Chairman

/s/ BOB LAKE
BOB LAKE
Vice Chair

/s/ KIRK BUSHMAN
KIRK BUSHMAN
Commissioner

/s/ TRAVIS KAVULLA
TRAVIS KAVULLA
Commissioner

/s/ ROGER KOOPMAN
ROGER KOOPMAN
Commissioner

ATTEST:

/s/ ALEISHA SOLEM
Aleisha Solem
Paralegal-Commission Secretary

(SEAL)

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 12th day of February 2015, a true and correct copy of the foregoing has been serviced by placing the same in the United States Mail, postage prepaid, to the service list in the Commission's master file which can be viewed at 1701 Prospect Avenue, Helena, MT 59601:

/s/ Aleisha Solem
Paralegal-Commission Secretary

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.

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 a soft back, bound 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 the accumulative table 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. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2014. This table includes those rules adopted during the period October 1, 2014, through December 31, 2014, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2014, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2014 Montana Administrative Register.

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

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I-VIII	Transitioning Existing Sales Finance Company Licenses to the Nationwide Multistate Licensing System - Use of the System for All Future Licensing, p. 1633, 2446
I-VIII	Transitioning Existing Consumer Loan Company Licenses to the Nationwide Multistate Licensing System - Use of the System for All Future Licensing, p. 1640, 2447
I-VIII	Transitioning Existing Escrow Business Company Licenses to the Nationwide Multistate Licensing System - Use of the System for All Future Licensing, p. 1647, 2448
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2.59.402	and other rules - Limited Income Persons - Credit Union Records Retention - Credit Union Debt Cancellation Contracts, p. 1856, 2445
2.59.1502	and other rule - Annual Report by Deferred Deposit Loan Licensees, p. 2058, 2826
2.59.1738	Renewal Fees for Mortgage Licensees, p. 2064, 2771

(Public Employees' Retirement Board)

- 2.43.3501 and other rule - Adoption by Reference - State of Montana Public Employee Defined Contribution Plan Document - State of Montana Public Employee Deferred Compensation (457) Plan Document, p. 1302, 1999
- 2.43.3502 Investment Policy Statement for the Defined Contribution Retirement Plan, p. 1299, 2443

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- 2.55.320 Classifications of Employments, p. 2904
- 2.55.502 Individual Loss Sensitive Dividend Distribution Plan, p. 1457, 2444

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- 2.63.201 and other rules - Procedural Rules - Definitions - Retailer Commissions - Business Changes - Prizes - License Requirements and Endorsements - Sale of Scratch Tickets, p. 528, 1387

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- 2.67.303 Maximum Pricing and Printing Standards, p. 642, 1216, 1389
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- I Phytosanitary Certificate Fees, p. 264, 1390
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- 4.12.1224 and other rule - Alfalfa Leaf Cutter Bees, p. 1144, 1591
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- 4.12.3009 and other rule - Seed Licensing Fees - Reporting and Assessment of Seed Sales, p. 534, 1217
- 4.13.1001A Grain Fee Schedule, p. 894, 1590

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- I Patient-Centered Medical Homes, p. 1863, 3045
- I-VII Network Adequacy, p. 3017
- 6.6.4902 and other rules - Patient-Centered Medical Homes, p. 2702, 3051

COMMERCE, Department of, Title 8

- 8.94.3708 and other rules - Administration of the CDBG Program, p. 3026
- 8.94.3727 Administration of the 2013-2014 Federal Community Development Block Grant (CDBG) Program, p. 1312, 1796
- 8.112.101 and other rules - Montana Heritage Preservation and Development Commission, p. 1147, 1797

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10.7.111 Bus Drivers, p. 1005, 1799

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