

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

In the matter of the adoption of New)	NOTICE OF PROPOSED
Rule I adopting by reference the	)	ADOPTION AND AMENDMENT
amended state of Montana public)	
employees pooled trust in the Defined	)	NO PUBLIC HEARING
Contribution Retirement Plan, the	)	CONTEMPLATED
amendment of ARM 2.43.3502 and)	
ARM 2.43.5102 adopting by)	
reference the amended stable value)	
fund investment policy statement in)	
the Defined Contribution Retirement)	
Plan and the 457(b) Deferred)	
Compensation plan respectively, and)	
the amendment of ARM 2.43.5104)	
adopting by reference the amended)	
state of Montana public employees)	
pooled trust in the 457(b) Deferred)	
Compensation plan)	

TO: All Concerned Persons

1. On March 15, 2019, the Public Employees' Retirement Board proposes to adopt and amend the above-stated rules.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Montana Public Employee Retirement Administration no later than 5:00 p.m. on February 1, 2019, to advise us of the nature of the accommodation that you need. Please contact Kris Vlado, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvlado@mt.gov.

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

NEW RULE I ADOPTION OF STATE OF MONTANA PUBLIC EMPLOYEES POOLED TRUST (1) The board adopts and incorporates by reference the amended Declaration of Trust - State of Montana Public Employees Pooled Trust that was approved by the board on December 13, 2018, and became effective on January 31, 2019.

(2) Copies of the State of Montana Public Employees Pooled Trust as amended and related materials may be obtained from MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, telephone 1 (877)

275-7372, or email mpera@mt.gov, and are available on MPERA's website at www.mpera.mt.gov.

AUTH: 19-3-2104, MCA

IMP: 19-3-2102, MCA

REASON: Prior to January 1, 2010, the State of Montana's Deferred Compensation (457(b)) Plan and the State of Montana's Defined Contribution Retirement Plan (DCRP) each contained an investment option known as a stable value fund. Both funds were managed by PIMCO and wrapped or insured by a single insurer. The board determined that the assets of the two plans allocated to the stable value fund options would be more efficiently managed if pooled and commingled in a group trust for investment purposes. The pooling and commingling of these funds required the board to enter into a Declaration of Trust creating a pooled trust under which the assets in the two stable value funds would be jointly invested but separately maintained and accounted for. The Declaration of Trust was adopted by reference in 2010 when ARM 2.43.5104 was enacted.

The Declaration of Trust included a Stable Value Investment Guideline Schedule which was agreed to by the investment manager, the board, and the insurer in September 2009. Since that time, the economic turn down necessitated the addition of two more insurers, and an accompanying request to amend the Group Trust's investment guidelines to meet the needs of the plan participants, the board, the investment manager, and the wrap insurers. The Montana Fixed Fund Investment Policy Statement was adopted by the board on December 13, 2018, and replaces the previous Stable Value Investment Guideline Schedule within the Declaration of Trust.

The board has determined to adopt by reference the Declaration of Trust as amended in rules pertaining to both the DCRP and the 457(b) Plan, rather than relying solely on ARM 2.43.5104. Therefore, New Rule I is proposed to adopt by reference the amended Declaration of Trust in the DCRP plan.

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

2.43.3502 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES FIXED FUND INVESTMENT POLICY STATEMENT (1) remains the same.

(2) The board adopts and incorporates by reference the ~~State of Montana Stable Value Investment Guidelines Schedule~~ Fixed Fund Investment Policy Statement approved by the board on December ~~29, 2009~~ 13, 2018. These guidelines apply to the investment of 401(a) defined contribution plan participant assets and 457(b) deferred compensation plan participant assets that are pooled together in the plans' stable value group trust. The ~~guidelines were investment policy statement was~~ developed through mutual agreement amongst the board, the investment manager, and the insurance wrap ~~provider~~ providers and ~~provide~~

provides guidance to the investment manager when investing participants' funds contained within the stable value group trust.

(3) Copies of the Defined Contribution Plan Investment Policy Statement and Full Discretion Guidelines the Fixed Fund Investment Policy Statement may be obtained from MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1 (877) 275-7372, e-mail mpera@mt.gov. The documents are also available online at www.mpera.mt.gov.

AUTH: 19-3-2104, MCA

IMP: 19-3-2104, 19-3-2122, MCA

2.43.5102 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES FIXED FUND INVESTMENT POLICY STATEMENT (1) remains the same.

(2) The board adopts and incorporates by reference the State of Montana Stable Value Investment Guidelines Schedule Fixed Fund Investment Policy Statement approved by the board on December ~~29, 2009~~ 13, 2018. These guidelines apply to the investment of 401(a) defined contribution plan participant assets and 457(b) deferred compensation plan participant assets that are pooled together in the plans' stable value group trust. The guidelines were investment policy statement was developed through mutual agreement amongst the board, the investment manager, and the insurance wrap ~~provider~~ providers and ~~provide~~ provides guidance to the investment manager advisor when investing participants' funds contained within the stable value group trust.

(3) Copies of the 457 Plan Investment Policy Statement and Full Discretion Guidelines the Montana Fixed Fund Investment Policy Statement may be obtained from MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1 (877) 275-7372, e-mail mpera@mt.gov. The documents are also available online at www.mpera.mt.gov.

AUTH: 19-50-102, MCA

IMP: 19-50-102, MCA

2.43.5104 ADOPTION OF STATE OF MONTANA PUBLIC EMPLOYEES POOLED TRUST (1) The board adopts and incorporates by reference the amended Declaration of Trust – State of Montana Public Employees Pooled Trust that was approved by the board ~~and effective on August 12, 2010~~ on December 13, 2018, and became effective on January 31, 2019.

(2) remains the same.

AUTH: 19-3-2104, 19-50-102, MCA

IMP: 19-3-2102, 19-50-102, MCA

REASON: On December 13, 2018, the board adopted the Montana Fixed Fund Investment Policy Statement to replace the Stable Value Investment Guidelines Schedule previously incorporated into the Declaration of Trust – State of Montana Public Employees Pooled Trust. As the Stable Value Investment Guidelines and the

original Declaration of Trust were adopted by reference, the Montana Fixed Fund Investment Policy Statement and the amended Declaration of Trust incorporating that investment policy statement must also be adopted by reference.

ARM 2.43.3502 as proposed to be amended replaces the Stable Value Investment Guidelines Schedule with the Montana Fixed Fund Investment Policy Statement within the Public Employees' Retirement System's Defined Contribution Retirement Plan.

ARM 2.43.5102 as proposed to be amended replaces the Stable Value Investment Guidelines Schedule with the Montana Fixed Fund Investment Policy Statement within the state of Montana's IRC 457(b) Deferred Compensation Plan.

ARM 2.43.5104 as proposed to be amended adopts by reference the Declaration of Trust as amended to incorporate the Montana Fixed Fund Investment Policy Statement in lieu of the Stable Value Investment Guidelines Schedule.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., February 8, 2019.

6. If persons who are directly affected by the proposed amendments wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Kris Vladic at the above address no later than 5:00 p.m., February 8, 2019.

7. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1,178 persons based on approximately 2,541 participants in the Defined Contribution Retirement Plan and 9,239 participants in the 457(b) Deferred Compensation Plan as of June 30, 2017, for a total of 11,780 participants.

8. The Public Employee Retirement Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the

request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the Montana Public Employee Retirement Administration.

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

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

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

/s/ Marty Tuttle
Marty Tuttle
President
Public Employees' Retirement Board

Certified to the Secretary of State January 2, 2019.

BEFORE THE STATE LOTTERY COMMISSION
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
2.63.204, 2.63.407, 2.63.606, and	)	AMENDMENT AND ADOPTION
2.63.1201 pertaining to general)	
provisions, retailer commission,	)	NO PUBLIC HEARING
duplicate licenses, and prizes and	)	CONTEMPLATED
adoption of New Rule I pertaining to)	
acceptable forms of payment)	

TO: All Concerned Persons

1. On February 12, 2019, the State Lottery Commission proposes to amend and adopt the above-stated rules.

2. The State Lottery Commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the State Lottery Commission no later than 5:00 p.m. on January 23, 2019, to advise us of the nature of the accommodation that you need. Please contact Denise Blankenship, State Lottery, 2525 North Montana Avenue, P.O. Box 200544, Helena, Montana 59601; telephone (406) 444-5801; fax (406) 444-5830, TDD/Montana Relay Service (406) 444-9642; or by e-mail to dblankenship@mt.gov.

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

2.63.204 GENERAL PROVISIONS (1) through (3) remain the same.

(4) The director shall adopt ~~rules~~ parameters for all games, including, but not limited to:

(a) through (f) remain the same.

(5) Game and promotional coupon ~~rules~~ parameters are subject to the commission's concurrence.

(6) remains the same.

AUTH: 23-7-202, MCA

IMP: 23-7-110, 23-7-202, 23-7-211, 23-7-212, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Because there has been some confusion, the commission determined it is necessary to amend "rules" to "parameters" to clarify that the requirements for lottery games are not adopted in administrative rule. "Parameters" better describes game specifications that the commission approves for all lottery games and promotions. Parameters include game design, ticket graphics, odds and prize structures, instructions on how to play

the game, and how to redeem a prize, as well as other characteristics associated with a game. These parameters are unique and change in every new game.

2.63.407 RETAILER COMMISSION (1) and (2) remain the same.

(a) Each retailer is assigned a scratch ticket sales base. The scratch ticket sales base is determined using the prior fiscal year's average scratch ticket pack activations minus pack returns.

(b) through (3) remain the same.

(a) Each retailer is assigned a terminal-issued ticket sales base for participating games. The terminal-issued ticket quarterly sales base is determined by a retailer's previous year's sales performance. Retailers with quarterly revenue greater than \$1,000 are eligible for this bonus program.

(b) through (5) remain the same.

AUTH: 23-7-202, 23-7-301, MCA

IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The commission has determined further explanation of how the scratch ticket incentive sales base is calculated is necessary because the scratch incentive program is outlined in rule, but how the base is determined for the program is not defined. Scratch ticket sales are based on activations of packs of tickets sold to a retailer. Active status is a pack's status when it is being sold to the public. The total cost of active packs is measured by the lottery as sales, and the minimum sales a retailer must meet to qualify for an incentive is determined by this amount. The retailer's past year's sales of terminal-issued games determine if a retailer is qualified to receive a bonus. If the retailer meets the minimum sales requirement of \$1,000, it has the opportunity to increase its sales and receive a bonus based on the percentage of increase. Traditional retailers have participated in a similar incentive program for over two decades. The commission made the decision to offer this incentive program to Montana Sports Action (MSA) retailers as well, which rewards the MSA retailer for promoting sales and increases revenue for the lottery. This will assist the lottery in its mission of funding the STEM Scholarship Program and increasing its annual transfer to the general fund.

2.63.606 DUPLICATE LICENSES (1) and (2) remain the same.

(3) The request for a duplicate license must be accompanied by a nonrefundable fee of \$10.

(4) and (5) remain the same.

AUTH: 23-7-202, MCA

IMP: 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: Only licensed retailers may sell lottery products in Montana. Upon completion of the licensure process, the lottery issues a license to the retailer, which identifies their retailer number, name, and business address allowing them to sell lottery products. The license is

nontransferable and must be prominently displayed at all times. If the retailer requires a duplicate license, it is assessed a replacement fee of \$10 because the lottery does incur costs to produce and supply the new license. Should a retailer locate the license after this process is complete, the commission believes it does not warrant a return of those funds because of its sunk costs.

2.63.1201 PRIZES (1) through (3) remain the same.

(4) Unless otherwise provided in the ~~rules~~ parameters for a specific game, a claimant shall sign the back of a winning lottery ticket.

(5) through (14) remain the same.

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: The commission decided it is necessary to amend "rules" to "parameters" to clarify that the requirements for lottery games are not adopted in administrative rule. "Parameters" better describes game specifications that the commission approves for all lottery games and promotions. Conditional parameters can be defined as game design, ticket graphics, odds and prize structures, instructions on how to play the game, and how to redeem a prize, as well as other characteristics associated with a game. These parameters are unique and change in every new game designed.

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

NEW RULE I ACCEPTABLE FORMS OF PAYMENT (1) The Montana Lottery Commission is charged with maximizing the net revenue to the state general fund and to the Montana STEM scholarship program under 23-7-202, MCA.

(2) The following forms of payment are authorized for the purchase of lottery tickets:

- (a) cash;
- (b) check; and
- (c) debit card.

AUTH: 23-7-202, MCA

IMP: 23-7-202, MCA

STATEMENT OF REASONABLE NECESSITY: The commission is proposing to adopt NEW RULE I to clarify the acceptable forms of payment for the purchase of lottery tickets. The lottery continues to receive regular inquiries from sales agents and the public if tickets can be purchased with debit cards, which is a common practice in most states. Section 23-7-302(3), MCA, allows lottery purchases to be made only with cash or a check and not credit cards. A debit card is similar to a check in that it is linked to the customer's checking account, resulting in funds being transferred from one account to another, except instead of a paper instrument an electronic funds transfer occurs as described in 32-6-103(3)(a), MCA.

(An electronic funds transfer "...also includes a transfer resulting from a debit card transaction....") Clearly, debit cards are not a form of credit. By including debit cards as a form of payment, the lottery would continue to maximize the net revenue to the state general fund and the Montana STEM scholarship program as required under 23-7-202(3), MCA. In addition, it would be easier for customers to purchase, and more efficient for retailers to sell, lottery products and would increase their sales commission. In short, the commission is proposing this new rule to respond to public demand and to maximize revenue while not violating the prohibition against using credit to purchase tickets.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions to Bryan Costigan, Security Director for the Montana Lottery, 2525 North Montana Avenue, Helena, Montana 59601; telephone (406) 444-5804; fax (406) 444-5830; or e-mail to Bcostigan@mt.gov and must be received no later than 5:00 p.m. on February 8, 2019.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Bryan Costigan at the above address no later than 5:00 p.m., on February 8, 2019.

7. If the commission receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; 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 80 persons based on the number of lottery retailers in the state.

8. The State Lottery Commission 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 commission.

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

website may be unavailable during some periods, due to system maintenance or technical problems.

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 commission has determined that the proposed rule amendments and rule adoption will not significantly and directly impact small businesses.

By: /s/ Wilbur Rehmann
Wilbur Rehmann, Chair
Montana Lottery Commission

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State January 2, 2019.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 6.6.313 pertaining to	)	AMENDMENT
replacement of life insurance or)	
annuities	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Montana State Auditor (CSI) proposes to amend the above-stated rule.

2. The CSI 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 CSI no later than 5:00 p.m. on January 23, 2019, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

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

6.6.313 SAMPLE FORMS (1) The State Auditor's Office adopts and incorporates by reference Appendix A, B, and C, which are set forth in the National Association of Insurance Commissioners' (NAIC) Life Insurance and Annuities Replacement Model Regulation, adopted ~~July 2000~~ in 2015. Copies of appendices A, B, and C are available for public inspection at the Office of the Montana State Auditor, 840 Helena Avenue, Helena, MT 59601. Copies of these appendices may be obtained by writing to the State Auditor's Office, Legal Department, 840 Helena Avenue, Helena, MT 59601. Persons obtaining a copy of these appendices must pay the cost of providing such copies.

AUTH: 33-1-313, MCA
IMP: 33-18-204, MCA

REASON: This rule is being amended because the rule currently includes a model regulation of the National Association of Insurance Commissioners (NAIC) that was adopted in 2000. This model regulation, regarding sample forms for life insurance and annuities, was revised and updated in the 2015 version of the NAIC Model Regulation. The 2000 version is therefore outdated for the purpose of regulating the industry's current practices. The proposed amendment will adopt Appendix A, B, and C sample forms of the 2015 version of the NAIC Model Regulation; and will therefore strive to maintain uniform nationwide standards for the insurance industry to follow.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Ivan C. Evilsizer, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-1295; fax (406) 444-3499; or e-mail chuck.evilsizer@mt.gov, and must be received no later than 5:00 p.m., February 15, 2019.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Ivan C. Evilsizer at the above address no later than 5:00 p.m., February 15, 2019.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 98,941 persons based on 10 percent of the population of Montana, based on the 2010 Census.

7. The CSI 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 may sign up by clicking on the blue button on the CSI's website at: <http://csimt.gov/laws-rules/> to specify 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. Requests may also be sent to the CSI in writing. Such written requests may be mailed or delivered to the contact information in 2. above, or may be made by completing a request form at any rules hearing held by the CSI.

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/ Ivan C. Evilsizer
Ivan C. Evilsizer
Rule Reviewer

/s/ Kristin Hansen
Kristin Hansen
Chief Legal Counsel

Certified to the Secretary of State on January 2, 2019.

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

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.183.303 definitions,)	PROPOSED AMENDMENT
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TO: All Concerned Persons

1. On February 13, 2019, at 1:30 p.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment 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 Professional Engineers and Professional Land Surveyors no later than 5:00 p.m., on February 6, 2019, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdpels@mt.gov (board's e-mail).

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

24.183.303 DEFINITIONS (1) through (3)(b) remain the same.

(i) at least six credits in English, seven credits in math, six credits in drafting, including three credits in survey drafting, nine credits in basic science, five credits in humanities and social sciences or approved associate of applied science degree benchmarks; and

(ii) and (4) remain the same.

(5) "Engineer-surveyor" means an individual licensed in Montana as both a professional engineer and professional land surveyor, with a license designation as "ES."

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

~~(7) "Nonprogressive land survey experience" means experience obtained under the supervision of a licensed professional land surveyor and may include one or more of the following:~~

~~(a) construction layout of buildings and miscellaneous structures;~~

~~(b) surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.;~~

~~(c) construction staking for land modification, highways, roads, utilities, etc.;~~
or

~~(d) other construction surveying experience.~~

(8) through (15) remain the same.

AUTH: 37-67-202, MCA

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

REASON: When this rule was adopted in 2016, the board inadvertently missed adding a provision for three credits in survey drafting to the definition of "board-approved curricula." Noting that these credits have been in the board-approved curricula adopted as policy prior to the rule's adoption, the board is now amending (3)(b)(i) to correct that omission.

Board staff noticed that individuals holding both a professional engineer license and a professional land surveyor license are given the title of "engineer-surveyor" or "ES" in the licensure database, but the title appears nowhere in board rules. Because dual licensees are referred to in several board rules, the board wishes to accurately name those individuals as engineer-surveyors and is now adding the term to this definitions rule.

Following significant discussion among land surveyor board members and leaders in the Montana land surveying community, the board determined there is no longer a need for a category of "nonprogressive land survey experience." The board concluded that the definition of progressive land survey experience will suffice to clearly identify experience the board recognizes and is striking (7).

24.183.404 FEE SCHEDULE (1) through (2)(f)(ii) remain the same.

(iii) ~~Dual license as a PE and PLS~~ Engineer-surveyor 120

(iv) through (3) remain the same.

AUTH: 37-1-134, 37-67-202, 37-67-322, 37-67-327, MCA

IMP: 37-1-134, 37-1-141, 37-1-319, 37-67-312, 37-67-313, 37-67-322, 37-67-327, MCA

REASON: The board determined it is reasonably necessary to amend several rules for the consistent use of "engineer-surveyors" for those licensed as both a professional engineer and professional land surveyor. The board is amending this

rule to add the updated designation and align with the new definition in ARM 24.183.303 and as used in the licensure database and on license certificates.

24.183.407 TEACHING OF ADVANCED ENGINEERING SUBJECTS IN MONTANA (1) ~~Either~~ When teaching advanced engineering subjects in Montana, ~~either~~ the class instructor or the person in responsible charge of the board-approved curriculum shall be a Montana licensed professional engineer and be in responsible charge of class instruction of engineering classes at the junior level and above.

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

IMP: 37-1-131, 37-67-101, 37-67-323, 37-67-324, MCA

REASON: Earlier in 2018, the board was approached with questions about whether this rule applied to engineering programs outside of Montana that are considered "board-approved" due to accreditation by a third party. Following discussion and advice from board legal counsel, the board concluded that this rule only applies to teaching engineering where the board has authority, i.e. within the state of Montana, and is amending the rule accordingly.

24.183.408 CERTIFICATE OF AUTHORIZATION (1) and (2) remain the same.

(3) A professional engineer or professional land surveyor designated in responsible charge on a certificate of authorization who leaves the employment of a certificate holder shall notify the board office in writing within 45 working days. The certificate holder must designate a replacement professional engineer and/or professional land surveyor in responsible charge and notify the board in writing within 45 working days ~~or surrender the certificate of authorization.~~

(4) In the event that a certificate holder no longer has a Montana licensee in responsible charge as required by 37-67-328, MCA, the certificate holder shall notify the board office. A certificate holder without a Montana licensed person in responsible charge must not offer or provide engineering or land surveying services in Montana until a Montana licensee in responsible charge has been identified.

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

IMP: 37-1-131, 37-67-328, MCA

REASON: During a recent renewal of certificates of authorization (COA), a certificate holder notified board staff that it would be unable to name a new engineer in responsible charge within the 45 days prescribed by this rule. Board and legal staff agreed that the board had no authority to require a "surrender" of the COA in this circumstance, nor is there any provision to make the certificate "inactive." Therefore, the board is amending this rule to remove the surrender provision and add a caution that COA holders cannot offer or provide services during any period with no Montana licensee in responsible charge.

24.183.502 APPLICATIONS (1) Applicants shall complete all experience required for approval of an application:

- ~~(a) prior to submission of an application; or~~
- ~~(b) at a time approved by the board.~~
- (2) through (6) remain the same.

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

IMP: 37-1-104, 37-67-312, 37-67-313, 37-67-322, 37-67-323, 37-67-324, 37-67-325, 37-67-326, 37-67-327, MCA

REASON: License applications have expiration dates set by ARM 24.183.504 and department rule. Additionally, standardized application procedures allow submission of supplemental information prior to an application's expiration. The board concluded that other unstated board deadlines are unnecessary and is amending the rule accordingly.

24.183.505 EXHIBITS OF LAND SURVEYING PROJECTS (1) An applicant for licensure as a land surveyor shall submit no less than two and no more than four exhibits of land surveying projects demonstrating the diversity of the applicant's experience. A minimum of one exhibit shall demonstrate be a certificate of survey or subdivision plat that demonstrates the applicant's knowledge of the principles and practices of boundary surveying.

(2) and (3) remain the same.

AUTH: 37-67-202, MCA

IMP: 37-67-326, MCA

REASON: The board's land surveyor members, with input from the state's land surveyor community, recommended the board amend this rule to more specifically describe the documents that adequately demonstrate knowledge of boundary surveying. Following discussion, the board accepted a recommendation to require that land surveyor applicants submit either a certificate of survey or a subdivision plat, which are documents the board regulates for content.

24.183.701 COMITY FOR PROFESSIONAL ENGINEERS (1) through (3) remain the same.

(4) Professional experience claimed by an applicant to meet the provisions of 37-67-312, MCA, regarding a precensure deficiency of experience does not have to occur under the supervision of a professional engineer.

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

IMP: 37-1-304, 37-67-312, MCA

REASON: Following an analysis of board statutes and the associated licensing requirements, board legal counsel advised that requiring supervised postlicense experience for deficient prelicense experience for comity applicants does not align with the provisions of 37-67-312, MCA. The statute provides that professional engineer applicants whose initial licensure in another state does not meet Montana's experience requirements must demonstrate two years of postlicensure experience

for each year of prelicense deficiency. Since licensed PEs practice engineering without supervision, the board agreed that postlicensure experience claimed to meet the statutory requirement does not have to be supervised by another licensee.

24.183.801 COMITY CONSIDERATION FOR PROFESSIONAL LAND SURVEYORS (1) through (3) remain the same.

(4) Professional experience claimed by an applicant to meet the provisions of 37-67-313, MCA, regarding a prelicensure deficiency of experience does not have to occur under the supervision of a professional land surveyor.

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

IMP: 37-1-304, 37-67-313, MCA

REASON: Following an analysis of board statutes and the associated licensing requirements, board legal counsel advised that requiring supervised postlicense experience for deficient prelicense experience for comity applicants does not align with the provisions of 37-67-313, MCA. The statute provides that land surveyor applicants whose initial licensure in another state does not meet Montana's experience requirements must demonstrate two years of postlicensure experience for each year of prelicense deficiency. Since licensed PLSs practice land surveying without supervision, the board agreed that postlicensure experience claimed to meet the statutory requirement does not have to be supervised by another licensee. The board is amending the title to align with the title of the engineers comity rule.

24.183.802 CLASSIFICATION OF LAND SURVEYING EXPERIENCE

(1) remains the same.

~~(2) Nonprogressive land surveying experience shall be credited at one-half time and shall be limited to a total of no more than two years.~~

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

AUTH: 37-67-202, MCA

IMP: 37-67-313, 37-67-325, 37-67-326, MCA

REASON: Because the board is proposing to eliminate the definition of "nonprogressive experience" from ARM 24.183.303 in this notice, it is reasonably necessary to remove it from this rule and no longer consider the experience.

24.183.2105 CONTINUING PROFESSIONAL COMPETENCY - CONTINUING EDUCATION (1) through (2)(d) remain the same.

(e) "Dual license Engineer-surveyor" means a person who is licensed as both an engineer and a land surveyor.

(3) through (7)(c) remain the same.

~~(d) Licensees currently on inactive status shall be exempt. Licensees who list their occupation as "retired" on the board approved renewal form and who further certify that they are no longer receiving any remuneration from providing professional engineering or land surveying services shall be exempt from the professional development hours required. In the event such a person elects to~~

~~return to active practice of professional engineering or land surveying, professional development hours must be earned before returning to active practice for each year exempted not to exceed the annual requirement for two years.~~

(8) The number of PDH units required ~~by dual licensees of engineer-surveyors~~ shall remain be 30, at least one-third of which shall be obtained in each profession.

AUTH: 37-1-319, MCA

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

REASON: The board is changing the definition of "dual license" to "engineer-surveyor" in this rule to align with changes elsewhere in this notice. The board is removing the term "retired" from (7)(d) as it is not used in board rules. Because licenses may be placed on inactive status per ARM 24.183.2102, the board is amending (7)(d) to clarify that inactive status licensees are exempt from the continuing education requirements and random audits but must provide proof of meeting continuing education requirements when converting to active status.

The board is amending (8) to update language and clarify for audit staff and licensees that engineer-surveyors do not have to acquire more CE than other licensees, although they must acquire minimum amounts for each license held.

24.183.2207 UNPROFESSIONAL CONDUCT (1) through (1)(i) remain the same.

(j) affixing a signature or seal to any plans or documents outside the competence of the licensee ~~and or~~ not prepared under their responsible charge;

(k) through (t) remain the same.

AUTH: 37-1-319, 37-67-202, MCA

IMP: 37-1-316, 37-67-331, 37-67-332, MCA

REASON: The board determined it is reasonably necessary to amend (1)(j) by changing "and" to "or." Following a board and department legal counsel suggestion that either element in this section is reasonable grounds for unprofessional conduct, the board is amending this rule accordingly.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdpels@mt.gov, and must be received no later than 5:00 p.m., February 15, 2019.

5. An electronic copy of this notice of public hearing is available at www.engineer.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system

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

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

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

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.183.303, 24.183.404, 24.183.407, 24.183.408, 24.183.502, 24.183.505, 24.183.701, 24.183.801, 24.183.802, 24.183.2105, and 24.183.2207 will not significantly and directly impact small businesses.

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

9. Ian Marquand, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
RON DRAKE, PROFESSIONAL ENGINEER
PRESIDING OFFICER

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

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

Certified to the Secretary of State January 2, 2019.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF BEHAVIORAL HEALTH
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.101.413, 24.154.403,	)	PROPOSED AMENDMENT AND
24.154.2107, 24.219.201,	)	REPEAL
24.219.401, 24.219.405, 24.219.409,)	
24.219.415, 24.219.2001,)	
24.219.2101, 24.219.2201, and the)	
repeal of 24.219.933, 24.219.2004,)	
24.219.2007, 24.219.2010,)	
24.219.2104, 24.219.2107,)	
24.219.2110, 24.219.2204,)	
24.219.2207, and 24.219.2210)	
pertaining to renewal dates and)	
requirements, military training or)	
experience, continuing education)	
procedures and documentation,)	
procedural rules, fee schedules,)	
continuing education requirements,)	
accreditation and standards, reporting)	
requirements, and continuing)	
education noncompliance)	

TO: All Concerned Persons

1. On February 4, 2019, at 9:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, 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 Behavioral Health (board) no later than 5:00 p.m., on January 28, 2019, to advise us of the nature of the accommodation that you need. Please contact Lucy Richards, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdbbh@mt.gov (board's e-mail).

3. The department is proposing to amend the following rule. The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(e) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(f)	<u>Behavioral Health</u>	<u>Licensed Clinical Professional Counselor</u>	<u>Annually</u>	<u>December 31</u>
		<u>Licensed Clinical Social Worker</u>	<u>Annually</u>	<u>December 31</u>
		<u>Licensed Marriage and Family Therapist</u>	<u>Annually</u>	<u>December 31</u>
		<u>Certified Behavioral Health Peer Support Specialist</u>	<u>Annually</u>	<u>December 31</u>
		<u>Licensed Addiction Counselor</u>	<u>Annually</u>	<u>June 30</u>

(f) through (p) remain the same but are renumbered (g) through (q).

(q)	Licensed Addiction Counselors	Licensed Addiction Counselor	Annually	June 30
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(r) through (ak) remain the same.

(al)	Social Workers and Professional Counselors	Professional Counselor—Clinical	Annually	December 31
		Social Worker—Clinical	Annually	December 31
		Marriage and Family Therapist	Annually	December 31

(am) through (ao) remain the same but are renumbered (al) through (an).

(6) and (7) remain the same.

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

IMP: 37-1-101, 37-1-141, MCA

REASON: The department determined it is reasonably necessary to amend this rule by removing obsolete references to the Board of Social Workers and Professional Counselors and the Board of Licensed Addiction Counselors. These license types are now within the authority of the Board of Behavioral Health which was renamed in 2015 through Senate Bill 22. Additionally, the 2017 legislature authorized the certification of behavioral health peer support specialists in Senate Bill 62 and placed this regulation within the authority of the Board of Behavioral Health.

4. The board is proposing to amend the following rules. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.154.403 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a licensed addiction counselor. ~~At a minimum, satisfactory~~ Satisfactory evidence ~~shall include~~ includes:

(a) a copy of the applicant's military discharge document (DD 214) or other discharge documentation;

(b) through (4) remain the same.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: Following adoption of this rule, it came to the board's attention that certain military personnel (i.e., reservists and national guardsmen who have never been activated) do not receive a DD 214 form upon their discharge from the military. It is reasonably necessary to amend this rule to allow applicants to submit other discharge documentation in lieu of the DD 214 form.

24.154.2107 CONTINUING EDUCATION PROCEDURES AND DOCUMENTATION (1) remains the same.

(2) Licensees must maintain documentation of completed CE for two years and make the records available to the department if the licensees are selected for a random audit. ~~The department will annually conduct a random audit of 15 percent of renewed licensees to verify compliance with CE requirements~~ board may randomly audit up to 50 percent of renewed licensees. Documentation must include the following information:

(a) licensee name;

(b) course title and description of content;

(c) presenter or sponsor;

(d) course date(s); and

(e) number of CE hours earned.

~~(3) Documentation verifying attendance must be attached for all CE listed on the submission form.~~

~~(4) Certificates of completion will not be returned and must include the course name, number of hours earned, date of completion, and signature of the provider.~~

~~(5) For each training attended, and in addition to the certificate of completion, LACs must submit an agenda with the specific breakdown of training hours (specific time of registration, breaks, lunch, etc.), a description of the training, and names of the presenters.~~

(6) through (10) remain the same but are renumbered (3) through (7).

AUTH: 37-1-319, 37-35-103, MCA

IMP: 37-1-104, 37-1-131, 37-1-306, 37-1-319, 37-35-103, MCA

REASON: The board is amending this rule to align with and further facilitate the department's standardized application, renewal, and audit procedures, and streamline the rule for better organization and ease of use for the reader.

The board is amending (2) to allow flexibility in conducting random CE audits. Currently, the board randomly audits two percent of all renewed licensees for each reporting period. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

Additional amendments eliminate outdated and unnecessary provisions and ensure consistency with department renewal and audit procedures.

24.219.201 PROCEDURAL RULES (1) The Board of ~~Social Work Examiners and Professional Counselors~~ hereby Behavioral Health adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 37-22-201, MCA

IMP: 2-4-201, MCA

REASON: The board is amending this rule to correctly refer to the Board of Behavioral Health, which was renamed via 2015's Senate Bill 22.

24.219.401 FEE SCHEDULE FOR SOCIAL WORKERS (1) through (6) remain the same.

~~(7) Continuing education application~~ 20

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

AUTH: 37-1-134, 37-22-201, MCA

IMP: 37-1-134, 37-1-141, 37-22-302, MCA

REASON: The board is amending the continuing education (CE) rules for licensed clinical social workers, licensed clinical professional counselors, and licensed marriage and family therapists to align with and further facilitate the department's standardized application, renewal, and audit procedures, and streamline the rules for better organization and ease of use for the reader. As a part of the standardization, the board concluded that it is reasonably necessary to place the responsibility on licensees to select quality CE programs that contribute to their knowledge and competence. Following amendment, the board will no longer approve sponsors or courses as the licensees must choose CE that meets the professional education objectives established in the CE requirements.

The board is deleting the CE course application fees from this rule and ARM 24.219.405 and 24.219.409 as unnecessary since licensees and CE providers will no longer be applying for course or provider approval. The board estimates removal of the CE application fee will affect approximately 855 applicants and result in a \$17,100 reduction in annual revenue.

24.219.405 FEE SCHEDULE FOR PROFESSIONAL COUNSELORS

(1) through (6) remain the same.

~~(7) Continuing education application~~ 20

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

AUTH: 37-1-134, 37-22-201, MCA

IMP: 37-1-134, 37-1-141, 37-23-206, MCA

24.219.409 FEE SCHEDULE FOR MARRIAGE AND FAMILY THERAPISTS

(1) through (6) remain the same.

~~(7) Continuing education application~~ 20

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

AUTH: 37-1-134, 37-37-201, MCA

IMP: 37-1-134, 37-1-141, 37-37-201, MCA

24.219.415 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training or education that is equivalent to relevant licensure requirements for a clinical professional counselor, clinical social worker, or marriage and family therapist. ~~At a minimum, satisfactory~~ Satisfactory evidence shall include includes:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) through (4) remain the same.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: Following adoption of this rule, it came to the board's attention that certain military personnel (i.e., reservists and national guardsmen who have never been activated) do not receive a DD 214 form upon their discharge from the military. It is reasonably necessary to amend this rule to allow applicants to submit other discharge documentation in lieu of the DD 214 form.

24.219.2001 CONTINUING EDUCATION REQUIREMENTS HOURS, CREDITS, AND CARRY OVER (1) ~~Each Licensed marriage and family therapist licensee shall earn~~ therapists must obtain 20 clock hours of accredited continuing marriage and family therapy education (CE) annually for each year. ~~Clock hours or contact hours shall be the actual number of hours during which instruction was given.~~

(2) Applicants licensed before July 1 of the renewal year will be required to fulfill the 20-hour requirement. Those licensed after July 1 are required to obtain one-half of the 20-hour requirement, and those licensed after October 1 will not be required to obtain CE for renewal.

~~(2)~~ (3) A maximum of ten clock hours may be given for the first-time

preparation of a new course, in-service training workshop, or seminar which is related to the enhancement of marriage and family therapy practice, values, skills, and knowledge; or a maximum of ten clock hours credit may be given for the preparation by the author or authors of a professional marriage and family therapy paper published for the first time in a recognized professional journal, or given for the first time at a statewide or national professional meeting.

~~(3)~~ (4) If a licensee completed more than 20 hours of continuing education CE, excess hours in an amount not to exceed 20 hours may be carried forward to the next year.

~~(4)~~ Any licensee may apply for an exemption from the continuing marriage and family therapy education requirements of these rules by filing a statement with the board setting forth good faith reasons why he or she is unable to comply with these rules, and an exemption may be granted by the board.

~~(5)~~ Marriage and family therapy applicants licensed before July 1 of the renewal year will be required to fulfill the 20-hour requirement. Those licensed after July 1 are required to obtain one-half of the 20-hour requirement; and those licensed after October 1 will not be required to obtain continuing education credits for renewal.

(5) Licensees are responsible for selecting quality programs that focus on protecting the health, safety, and welfare of the public and contribute to licensees' professional knowledge and competence. Acceptable CE activities:

(a) directly relate to the scope of practice of marriage and family therapy as defined in board statutes and rules;

(b) review existing concepts and techniques;

(c) convey information beyond the basic professional education;

(d) update knowledge on the practice and advances in marriage and family therapy; and/or

(e) reinforce professional conduct or ethical obligations of the licensee.

(6) The board may randomly audit up to 50 percent of renewed licensees.

(7) Licensees must maintain documentation of completed CE for three years and provide documentation to the board upon request. Documentation must include the following information:

(a) licensee name;

(b) course title and description of content;

(c) presenter or sponsor;

(d) course date(s); and

(e) number of CE hours earned.

(8) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next education reporting period.

(9) Any CE hours required by disciplinary order do not apply toward the 20 hours that are required annually under this rule.

(10) A licensee may request an exemption from CE requirements due to hardship. Requests will be considered by the board.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, 37-37-101, MCA

REASON: The board is amending this rule and ARM 24.219.2101 and 24.219.2201 to align with and further facilitate the department's standardized application, renewal, and audit procedures, and streamline the rules for better organization and ease of use for the reader. As a part of the standardization, the board concluded that it is reasonably necessary to place the responsibility on licensees to select quality continuing education (CE) programs that contribute to their knowledge and competence. Following the amendments, the board will no longer approve sponsors or courses as licensees must choose CE that meets the professional education objectives set forth in the respective rules.

The board is adding (6) to allow flexibility in conducting random CE audits. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

The board is clarifying in (8) that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes. To address licensee and staff questions, the board is clarifying in (9) that any CE required pursuant to a licensee's disciplinary action is independent of regular CE requirements.

Additional amendments will eliminate outdated, redundant, and unnecessary provisions, and provide consistency, simplicity, better organization, and ease of use for the reader. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.219.2101 CONTINUING EDUCATION REQUIREMENTS HOURS, CREDITS, AND CARRY OVER (1) ~~Each social work licensee of the Board of Social Work Examiners and Professional Counselors shall earn~~ Licensed clinical social workers must obtain 20 clock hours of accredited continuing social work education (CE) annually ~~each year. Clock hours or contact hours shall be the actual number of hours during which instruction was given.~~

(2) Applicants licensed before July 1 of the renewal year will be required to fulfill the 20-hour requirement. Those licensed after July 1 are required to obtain one-half of the 20-hour requirement, and those licensed after October 1 will not be required to obtain continuing education credits for renewal.

~~(2)~~ (3) A maximum of ten clock hours may be given for the first-time preparation of a new course, in-service training workshop, or seminar which is related to the enhancement of social work practice, values, skills and knowledge; or a maximum of ten clock hours credit may be given for the preparation by the author or authors of a professional social work paper published for the first time in a recognized professional journal or given for the first time at a statewide or national professional meeting.

~~(3)~~ (4) If a licensee completed more than 20 hours of CE continuing education ~~after 1985~~, excess hours in an amount not to exceed 20 hours may be carried forward to the next year.

~~(4) Any licensee may apply for an exemption from the continuing social worker education requirements of these rules by filing a statement with the board setting forth good faith reasons why he or she is unable to comply with these rules~~

and an exemption may be granted by the board.

~~(5) Social work applicants licensed before July 1 of the renewal year will be required to fulfill the 20 hour requirement. Those licensed after July 1 are required to obtain one half of the 20 hour requirement; and those licensed after October 1, will not be required to obtain continuing education credits for renewal.~~

(5) Licensees are responsible for selecting quality programs that focus on protecting the health, safety, and welfare of the public and contribute to licensees' professional knowledge and competence. Acceptable CE activities:

(a) directly relate to the scope of practice of social work as defined in board statutes and rules;

(b) review existing concepts and techniques;

(c) convey information beyond the basic professional education;

(d) update knowledge on the practice and advances in social work; and/or

(e) reinforce professional conduct or ethical obligations of the licensee.

(6) The board may randomly audit up to 50 percent of renewed licensees.

(7) Licensees must maintain documentation of completed CE for three years and provide documentation to the board upon request. Documentation must include the following information:

(a) licensee name;

(b) course title and description of content;

(c) presenter or sponsor;

(d) course date(s); and

(e) number of CE hours earned.

(8) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next education reporting period.

(9) Any CE hours required by disciplinary order do not apply toward the 20 hours that are required annually under this rule.

(10) A licensee may request an exemption from CE requirements due to hardship. Requests will be considered by the board.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, 37-22-201, MCA

REASON: See REASON for ARM 24.219.2001.

24.219.2201 CONTINUING EDUCATION REQUIREMENTS HOURS, CREDITS AND CARRY OVER ~~(1) Each licensee of the Board of Social Work Examiners and Professional Counselors shall earn Licensed clinical professional counselors must obtain 20 clock hours of accredited continuing professional counselor education (CE) annually each year. Clock hours or contact hours shall be the actual number of hours during which instruction was given.~~

(2) Applicants licensed before July 1 of the renewal year will be required to fulfill the 20-hour requirement. Those licensed after July 1 are required to obtain one-half of the 20-hour requirement, and those licensed after October 1 will not be required to obtain continuing education credits for renewal.

(2) (3) A maximum of ten clock hours may be given for the first-time

preparation of a new course, in-service training workshop, or seminar which is related to the enhancement of professional counselor practice, values, skills and knowledge; or a maximum of ten clock hours credit may be given for the preparation by the author or authors of a professional counselor paper published for the first time in a recognized professional journal or given for the first time at a statewide or national professional meeting.

~~(3)~~ (4) If a licensee completes more than 20 hours of CE continuing education after 1986, excess hours in an amount not to exceed 20 hours may be carried forward to the next year.

~~(4)~~ Any licensee may apply for an exemption from the continuing professional counselor education requirements of these rules by filing a statement with the board setting forth good faith reasons why he or she is unable to comply with these rules and an exemption may be granted by the board.

~~(5)~~ Professional counselors licensed before July 1 of the renewal year will be required to fulfill the 20-hour requirement. Those licensed after July 1, are required to obtain one-half of the 20-hour requirement; and those licensed after October 1, will not be required to obtain continuing education credits for renewal.

(5) Licensees are responsible for selecting quality programs that focus on protecting the health, safety, and welfare of the public and contribute to licensees' professional knowledge and competence. Acceptable CE activities:

(a) directly relate to the scope of practice of professional counseling as defined in board statutes and rules;

(b) review existing concepts and techniques;

(c) convey information beyond the basic professional education;

(d) update knowledge on the practice and advances in professional counseling; and/or

(e) reinforce professional conduct or ethical obligations of the licensee.

(6) The board may randomly audit up to 50 percent of renewed licensees.

(7) Licensees must maintain documentation of completed CE for three years and provide documentation to the board upon request. Documentation must include the following information:

(a) licensee name;

(b) course title and description of content;

(c) presenter or sponsor;

(d) course date(s); and

(e) number of CE hours earned.

(8) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next education reporting period.

(9) Any CE hours required by disciplinary order do not apply toward the 20 hours that are required annually under this rule.

(10) A licensee may request an exemption from CE requirements due to hardship. Requests will be considered by the board.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, 37-22-201, MCA

REASON: See REASON for ARM 24.219.2001.

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

24.219.933 CONTINUING EDUCATION NONCOMPLIANCE

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-38-202, MCA

IMP: 37-1-131, 37-1-136, 37-1-306, 37-1-321, 37-38-202, MCA

REASON: The board is repealing this rule to align with the administrative suspension provisions of 37-1-321, MCA, and facilitate the department's standardized audit procedures.

24.219.2004 ACCREDITATION AND STANDARDS

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-306, 37-37-101, MCA

REASON: Because the board is amending the CE rules in this notice to place the responsibility on licensees to select quality continuing education (CE) programs and will no longer approve sponsors or courses, the board is repealing this rule as no longer necessary.

24.219.2007 REPORTING REQUIREMENTS

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-306, 37-37-101, MCA

REASON: The board is amending the CE rules in this notice to align with the department's standardized application, renewal, and audit procedures. Following a recommendation by department legal staff, the board is repealing this unnecessary rule as current renewal procedures require that licensees affirm an understanding of the CE requirements and the potential of being audited for compliance.

24.219.2010 CONTINUING EDUCATION NONCOMPLIANCE

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-136, 37-1-306, 37-1-316, 37-37-101, MCA

REASON: See REASON for ARM 24.219.933.

24.219.2104 ACCREDITATION AND STANDARDS

AUTH: 37-1-319, 37-22-201, MCA

IMP: 37-1-306, MCA

REASON: See REASON for ARM 24.219.2004.

24.219.2107 REPORTING REQUIREMENTS

AUTH: 37-23-103, MCA
IMP: 37-23-205, MCA

REASON: See REASON for ARM 24.219.2007.

24.219.2110 CONTINUING EDUCATION NONCOMPLIANCE

AUTH: 37-1-319, 37-22-201, MCA
IMP: 37-1-306, MCA

REASON: See REASON for ARM 24.219.933.

24.219.2204 ACCREDITATION AND STANDARDS

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

REASON: See REASON for ARM 24.219.2004.

24.219.2207 REPORTING REQUIREMENTS

AUTH: 37-1-131, 37-23-103, MCA
IMP: 37-23-101, 37-23-103, 37-23-205, 37-23-211, MCA

REASON: See REASON for ARM 24.219.2007.

24.219.2210 CONTINUING EDUCATION NONCOMPLIANCE

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

REASON: See REASON for ARM 24.219.933.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdbbh@mt.gov, and must be received no later than 5:00 p.m., February 8, 2019.

7. An electronic copy of this notice of public hearing is available at www.bbh.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system

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

8. 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 Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdbbh@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

10. Regarding the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.101.413 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.154.403, 24.154.2107, 24.219.201, 24.219.401, 24.219.405, 24.219.409, 24.219.415, 24.219.2001, 24.219.2101, and 24.219.2201 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.219.933, 24.219.2004, 24.219.2007, 24.219.2010, 24.219.2104, 24.219.2107, 24.219.2110, 24.219.2204, 24.219.2207, and 24.219.2210 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or to dlibsdbbh@mt.gov.

11. Lucy Richards, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF BEHAVIORAL HEALTH
DR. PETER DEGEL, LCPC
CHAIRPERSON

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

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

Certified to the Secretary of State January 2, 2019.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.86.1402 pertaining to clinic) PROPOSED AMENDMENT
services requirements)

TO: All Concerned Persons

1. On January 31, 2019, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on January 22, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.1402 CLINIC SERVICES, REQUIREMENTS (1) through (3) remain the same.

(4) Conditions for coverage of listed ambulatory surgical center procedures:

(a) ~~Covered surgical procedures are limited to those procedures that do not generally exceed:~~ Subject to the exclusions in (b), covered surgical procedures are surgical procedures that would not be expected to pose a significant safety risk to a member when performed in an ambulatory surgical center (ASC) and for which standard medical practice dictates that the member would not typically be expected to require active medical monitoring and care at midnight following the procedure.

~~(i) a total of 90 minutes operating time; and~~

~~(ii) a total of four hours recovery or convalescent time.~~

(b) ~~If the covered surgical procedure requires anesthesia, the anesthesia must be:~~ Covered surgical procedures do not include those that:

~~(i) local or regional anesthesia; or~~

~~(ii) general anesthesia of 90 minutes or less duration.~~

~~(c) Covered surgical procedures may not be of a type that:~~

~~(i) generally result in extensive blood loss;~~

~~(ii) requires a major or prolonged invasion of body cavities;~~

~~(iii) directly involves major blood vessels;~~

- (iv) are generally emergency or life threatening in nature; or
- (v) can safely be performed in a physician's or dentist's office.
- (d) remains the same, but is renumbered (c).
- (5) remains the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-141, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.86.1402 to update covered surgical procedures. The reasonable necessity for the proposed amendment is to conform the rule to federal requirements. The proposed amendment will update the clinic service requirements for ambulatory surgical centers to reflect the requirements found in 42 CFR 416.166.

Fiscal Impact

These proposed amendments do not have a fiscal impact as providers are currently following Medicare coverage criteria. These proposed amendments do not change reimbursement methodology, service, or eligible provider criteria.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., February 8, 2019.

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

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

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

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

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

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

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

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

Certified to the Secretary of State January 2, 2019.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.47.101, 37.47.102,) PROPOSED AMENDMENT
37.47.106, 37.47.107, and 37.47.111)
pertaining to adult protective services)

TO: All Concerned Persons

1. On January 31, 2019, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on January 22, 2019 to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.47.101 ADULT PROTECTIVE SERVICES: PURPOSE (1) Adult protective services are services intended to reduce or remove the risk of physical or mental harm that has occurred or is occurring to a vulnerable adult, as a result of abuse, neglect, or exploitation ~~prevent or remedy neglect, exploitation or abuse of aged persons or disabled adults who are unable to protect their own interests.~~

AUTH: ~~53-2-201~~, 52-3-205, 52-3-802, MCA
IMP: ~~53-5-205~~, 52-3-205, 52-3-804, MCA

37.47.102 ADULT PROTECTIVE SERVICES: DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Aged person" means a person ~~65~~ 60 years of age or older.

~~(2)~~ (3) "Disabled adult" means a person of 18 through ~~65~~ 59 years of age who is defined as disabled pursuant to 53-19-102, MCA, or who is a person with developmental or intellectual disabilities, as defined in 53-20-102, MCA, or who is determined to be:

- (a) ~~determined to be~~ disabled by the Social Security Administration;
- (b) ~~determined~~ fully disabled by the Veterans' Administration;

- (c) ~~determined~~ disabled by the department's Vocational Rehabilitation Division;
- (d) adjudicated disabled by a court of competent jurisdiction; ~~or~~
- (e) ~~determined~~ eligible for the medically needy program, as set forth in ARM 37.82.1107, because of disability; ~~or~~
- (f) ~~does not include the developmentally disabled as defined in intellectually disabled as determined by the department as defined by 53-20-102, MCA.~~
- (3) (5) "Protective services" means services ~~directed at preventing or remedying neglect, abuse, or exploitation of aged or disabled adults to reduce or remove the risk of physical or mental harm that has occurred or is occurring to a vulnerable adult, as a result of abuse, neglect, or exploitation.~~
- (4) (6) "Voluntary services" means protective services requested or accepted ~~by an aged person or disabled~~ a vulnerable adult.
- (5) (4) "Non-voluntary services" means protective services provided under ~~court-ordered~~ court order legal guardianship to a ~~ward who is aged or disabled~~ vulnerable adult.
- (6) remains the same but is renumbered (8).
- (7) "Vulnerable adult" means an "aged person" or "disabled adult."
- (7) remains the same but is renumbered (2).

AUTH: ~~53-2-204~~ 52-3-205, 52-3-802, MCA

IMP: ~~53-5-205~~ 52-3-205, 52-3-804, MCA

37.47.106 ADULT PROTECTIVE SERVICES: AVAILABLE SERVICES

- (1) Voluntary services include, but are not limited to:
 - (a) remains the same.
 - (b) investigating referrals and ~~diagnosing~~ identifying problems to determine extent and type of services needed;
 - (c) ~~counseling~~ assisting in locating behavioral health services for the individual and family;
 - (d) ~~arranging or facilitating~~ assisting in locating appropriate alternative living arrangements or protective placements;
 - (e) remains the same.
 - (f) assisting in arrangement of medical health related services;
 - (g) and (h) remain the same.
 - (i) assisting in arranging services to preserve or enhance the current living arrangement, when desirable, in the best interest of the ~~aged person or disabled~~ vulnerable adult.
- (2) Non-voluntary services may include any voluntary service under (1) ~~above~~, and any other services ordered by the court through guardianship proceedings.

AUTH: ~~53-2-204~~ 52-3-205, 52-3-802, MCA

IMP: ~~53-5-205~~ 52-3-205, 52-3-804, MCA

37.47.107 ADULT PROTECTIVE SERVICES, ELIGIBILITY (1) Adult protective services will be provided when necessary without regard to income to any ~~person who is aged or disabled~~ vulnerable adult as defined in ARM 37.47.102.

AUTH: ~~53-2-201~~ 52-3-205, 52-3-802, MCA

IMP: ~~53-5-203, 53-5-204, 53-5-205~~ 52-3-205, 52-3-804, MCA

37.47.111 ADULT PROTECTIVE SERVICES: OBTAINING SERVICES

(1) The ~~welfare department~~ Adult Protective Services office of the county in which the applicant vulnerable adult resides or is found ~~receives and will~~ investigates requests for protective services.

(2) Request for service is accepted from ~~aged or disabled persons~~ the vulnerable adult on their own behalf or from any relative or persons interested in the individual's ~~welfare~~ safety and wellbeing.

(3) A request for service may be written, electronic, or oral, ~~however, a written request on a form available from the county welfare department is preferred.~~

AUTH: ~~53-2-201~~ 52-3-205, 52-3-802, MCA

IMP: ~~53-5-205~~ 52-3-205, 52-3-804, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.47.101, 37.47.102, 37.47.106, 37.47.107, and 37.47.111 to bring the rules current with Montana Code Annotated and current language used locally and nationally in the field of Adult Protective Services for continuity. Making these amendments to these rules will create consistency with Montana Code Annotated and in the terminology used nationally for National Adult Protective Services Association (NAPSA). After review with the various groups identified, these rules were not current with today's terminology.

ARM 37.47.101

The department is proposing to amend ARM 37.47.101 to change terminology, remove the phrase "prevent or remedy" to "reduce or remove" to better reflect the goals and mission of the department.

ARM 37.47.102

The department is proposing to amend ARM 37.47.102 to harmonize this rule with Montana Code Annotated by clarifying the segment of the population that can receive protective services by using the terminology of "vulnerable adult" to include all aged and disabled adults. The department is also alphabetizing the definitions in this rule.

ARM 37.47.106

The department is proposing to amend ARM 37.47.106 to change terminology to reflect what the department is able to do. The department does not diagnose individuals or families.

ARM 37.47.107

The department is proposing to amend ARM 37.47.107 to update terminology to be consistent with the other changes being made in this rulemaking.

ARM 37.47.111

The department is proposing to amend ARM 37.47.111 to change terminology and reflect current terms and clarify that Adult Protective Services is no longer a county function, but is administered by the state with local offices.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., February 8, 2019.

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

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

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

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

/s/ Mark Prichard
Mark Prichard
Rule Reviewer

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

Certified to the Secretary of State January 2, 2019.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 8.94.3729 pertaining to the)	
administration of the 2018 and 2019)	
Program Year Federal Community)	
Development Block Grant (CDBG))	
Program – Public Facilities Projects)	
and ARM 8.94.3730 pertaining to the)	
administration of the 2018 and 2019)	
Program Year Federal Community)	
Development Block Grant (CDBG))	
Program – Affordable Housing)	
Projects)	

TO: All Concerned Persons

1. On November 16, 2018, the Department of Commerce published MAR Notice No. 8-94-163 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2277 of the 2018 Montana Administrative Register, Issue Number 22.

2. The department has thoroughly considered the comments and testimony received. The comments received and the department's responses are as follows:

COMMENT #1: A commenter stated that they would like for the department to consider visit ability and universal design in Montana's housing programs.

RESPONSE #1: The application guidelines for federally funded housing programs, administered by the Community Development Division, require all new construction to include and all rehabilitation projects are encouraged to include visit ability and universal design.

COMMENT #2: A commenter stated that the application deadline presents a hardship for rural communities and will require additional public meetings which puts a financial burden on the communities and does not align with other similar programs.

RESPONSE #2: The department would like to promote public involvement at the local level and support rural communities in their community growth and development; therefore, the application deadline will be moved to March 15, 2019. Furthermore, to meet the required meeting dates, the application guidelines will be updated to allow for a longer period of time to use the previously conducted community needs assessment and project specific public meeting requirements.

COMMENT #3: A commenter stated that they would like to see changes related to procurement for CDBG Rehab projects.

RESPONSE #3: The department is required to follow procurement regulations found in 2 CFR 200 Part 320 for all projects funded with CDBG funds. The federal regulations are passed down to the grantee through the contract and to entities that the grantee assigns, transfers, or subcontracts any portion of the contract scope of work to.

3. The department has amended ARM 8.94.3729 and ARM 8.94.3730 as proposed.

/s/ Marty Tuttle
Marty Tuttle
Rule Reviewer

/s/ Pam Haxby-Cote
Pam Haxby-Cote
Director
Department of Commerce

Certified to the Secretary of State January 2, 2019.

BEFORE THE GOVERNOR'S OFFICE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 14.6.101 and 14.6.102 and the) ADOPTION
adoption of New Rules I, II, III, and)
IV, pertaining to implementation of)
the Greater Sage-Grouse)
Stewardship Act)

TO: All Concerned Persons

1. On October 19, 2018, the Sage Grouse Habitat Conservation Program on behalf of the Governor's Office published MAR Notice No. 14-5 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 1997 of the 2018 Montana Administrative Register, Issue Number 20.

2. On November 9, 2018, a public hearing was held in Helena, Montana. Public comment was accepted until November 19, 2018. Five written comment letters were received, and two oral comments were received during the hearing.

3. The Governor's Office has amended the following rules as proposed:
ARM 14.6.101 and 14.6.102.

4. The Governor's Office has adopted New Rules I through IV as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (14.6.103) HABITAT QUANTIFICATION TOOL DESIGNATION

(1) and (2) remain as proposed.

(3) Minor versions of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse shall be recorded by the program after a publicly announced meeting of the Montana Sage Grouse Oversight Team and after accepting public comment.

(4) Once the current Montana Mitigation System HQT has been applied to calculate the functional acres gained on ~~credits of~~ a proposed mitigation site, or the functional acres lost on ~~debits of~~ a proposed development site; the program has completed its review; and the project developer obtains the necessary state or federal permits, any subsequent versions of the HQT will not apply to the project except as provided in (b).

(a) Once the HQT has been applied to calculate the number of functional acres gained or lost ~~credits or debits~~ for a project and MSGOT has approved, the number of calculated functional acres gained or lost ~~credits or debits~~ will not be changed without written approval from every party to the mitigation transaction for the project ~~all affected parties~~, including, but not limited to:

- (i) MSGOT;
- (ii) the project developer; and

- (iii) the credit provider; ~~and~~
- (iv) ~~any affected third parties.~~

(b) Permit amendments will be subject to the current version of the HQT to calculate functional acres lost ~~debts~~ resulting from new activities associated with the amendment.

(c) remains as proposed.

(5) The current version of the MSGOT designated Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse is the version made available to the public on the program's web site. Past versions of HQT and the technical manual will be blocked from further use except as allowed in (4)(a) and preserved in archive by the program.

(6) MSGOT or any other third party must apply the current version of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse to calculate functional acres gained or lost ~~credits and debts~~ as provided on the program's website and applied by the program to perform the calculations for the following:

(a) through (d) remain as proposed.

(e) calculating functional acres gained ~~credits created~~ by funding from the Sage-Grouse Stewardship Account; or

(f) calculating functional acres gained ~~credits~~ through stand-alone efforts to create mitigation credit sites.

NEW RULE II (14.6.104) COMPENSATORY MITIGATION SYSTEM

(1) The mitigation sequence is applicable to all activities within sage grouse core areas, general habitat and connectivity habitat subject to agency review, approval, or authorization including temporary ~~temporal~~ impacts that are later rectified through reclamation and restoration activities, unless exempted by MSGOT.

(2) and (3) remain as proposed.

(4) Minor versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse shall be recorded by the program after a publicly announced meeting of the Montana Sage Grouse Oversight Team and after accepting public comment.

(5) The current version of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse is the version made available to the public on the program's website. Past versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse will be blocked from further use except as allowed in ARM 14.6.103(4)(a) and preserved in an archived by the program.

(6) and (7) remain as proposed.

(a) the number of calculated credits or debts will not be changed without written approval from every party to the mitigation transaction for the project ~~all affected parties~~, including, but not limited to:

- (i) MSGOT;
- (ii) the project developer; and
- (iii) the credit provider; ~~or~~
- (iv) ~~any affected third parties; and~~
- (b) and (c) remain as proposed.

(8) MSGOT or any other third party shall use the current Montana Mitigation System Policy Guidance for Greater Sage-Grouse provided on the program's web site and applied by the program to determine the number of debits or credits for the following:

(a) through (11) remain as proposed.

NEW RULE III (14.6.105) METHOD TO TRACK AND MAINTAIN THE NUMBER OF CREDITS AND DEBITS AVAILABLE AND USED (1) through (4)(c) remain as proposed.

(d) the location of all credits generated and debits generated; ~~and~~

(e) credit transactions between parties; and

(f) service area of the debits and credits, respectively.

(5) remains as proposed.

NEW RULE IV (14.6.106) METHOD TO ADMINISTER THE REVIEW AND MONITORING OF MSGOT FUNDED PROJECTS (1) through (2)(g) remain as proposed.

(h) the geospatial location and/or legal description of where the project was implemented;

(i) through (m) remain as proposed.

(n) sage grouse leks on and in the vicinity of the project area, and trend data on the number of breeding males on those leks; ~~and~~

(o) the grant agreement number assigned by the Program and any amendments to the original grant; and

(p) service area.

5. The Governor's Office, the Montana Sage Grouse Oversight Team, and the Sage Grouse Habitat Conservation Program have thoroughly considered the comments and testimony received and undertaken their own critical reading of the proposed rules. The following is a summary of the public comments received and the responses to those comments:

COMMENT 1: MSGOT should reconsider the change to the Montana Mitigation System Policy Guidance Document for Greater Sage-Grouse, October 2018 Version 1.0 that sets aside 5% of each individual Reserve Account contribution for use, at its discretion to address economic feasibility constraints. The new language redirects a portion of a reserve credits intended to function as an insurance pool to replace credits lost due to unavoidable losses and diverts to a pool of credits to address economic concerns for projects yet to be initiated. If a change to the underlying documents cannot be made within the context of the current rulemaking process, MSGOT should do so at the earliest possible opportunity.

RESPONSE TO COMMENT 1: MSGOT will take the comment into consideration. MSGOT approved the Policy Guidance Document on October 4, 2018. The concern expressed by this commenter can be discussed and considered by MSGOT during the future adaptive management reviews. MSGOT has discretion to work with developers who show economic feasibility constraints and has a variety of policy

tools at its disposal. The Policy Guidance provides a process by which developers can endeavor to show economic feasibility constraints and request MSGOT assistance through either financial or credit-matching policy tools, one of which entails MSGOT matching the developer's credits with some of its own credits set aside in the Reserve Account. It is unknown if or when MSGOT might be asked to tap its own set-aside credits in the Reserve Account. If MSGOT receives such a request, it would exercise its discretion at that time to decide whether or not to do so. MSGOT may have credits available from the pool created by Stewardship Account grant awards or seek to apply other policy tools outlined in the Policy Guidance Document. Because MSGOT meetings are open to the public, the public is afforded an opportunity to comment prior to MSGOT making a decision about use of credits set aside in the Reserve Account or any of the other policy tools it has available.

COMMENT 2: Two commenters expressed concern about, and sought changes to, the Policy Guidance Document (Version 1.0, October 2018) and the Habitat Quantification Tool Technical Manual (Version 1.0, October 2018).

RESPONSE TO COMMENT 2: MSGOT approved both mitigation documents on October 4, 2018, after an extensive collaboration process among diverse stakeholders between September 2016 and December 2017, multiple opportunities for informal comment and discussion during the stakeholder process, and at least four MSGOT solicitations for comment on successive drafts. Stakeholders acknowledged that they could not agree on certain issues and that MSGOT ultimately had to resolve differences among stakeholder viewpoints. MSGOT endeavored to balance competing interests among diverse stakeholders holding strong and divergent views. Both mitigation system documents include an adaptive management section that calls for an annual stakeholder workshop to gather information, identify concerns, and discuss ideas for improvement. An adaptive management report would be prepared and provided to MSGOT for discussion during a publicly-noticed meeting, during which additional public comment may be taken. MSGOT also assesses whether specific adaptive management objectives identified in the mitigation documents are being met and ultimately decides whether major or minor changes are needed. MSGOT is committed to transparency through open deliberations by and with participants in the mitigation system, as well as ongoing improvement that reflects adaptive management learning, new information, and especially new science.

COMMENT 3: One commenter supported the proposed rules.

RESPONSE TO COMMENT 3: Thank you for your comment.

COMMENT 4: Some commenters expressed that certain statements were not in the actual text of the proposed administrative rules. Examples include: (1) the rules should require MSGOT meetings to be publicly noticed; (2) the rules do not provide sufficient assurance that developers can seek and obtain dispensation for mitigation obligations by using one or more of the policy tools in circumstances of economic infeasibility based on MSGOT's discretionary decision authority; and (3) developers

should be able to challenge an HQT determination without having to incur the costs, delays, and uncertain outcomes of a full MAPA proceeding.

RESPONSE TO COMMENT 4: MSGOT approved the Montana Mitigation System Policy Guidance Document Version 1.0 October 2018, and the Montana Mitigation System Habitat Quantification Tool Technical Manual Version 1.0, October 2018 on October 4, 2018. The rules themselves direct implementation of these two mitigation system documents and describe the process by which future versions of the HQT and mitigation system documents will be established and managed. Accordingly, the rules and the underlying documents should be read as a whole and considered in tandem. This is particularly important with respect to the adaptive management sections within each document, respectively. In the Policy Guidance Document, see pages 84-87. In the Habitat Quantification Tool Technical Manual, see pages 64-68. Some of the perceived textual omissions in the rules are actually included in either or both of the two documents, respectively, and fully operational even if not also stated in the rules. Information contained in the supporting documents need not be duplicated in rule, and administrative rules need not delineate requirements that are otherwise legally provided for.

For example, the requirement for MSGOT meetings to be publicly noticed resides within the Montana Constitution; therefore, the requirement does not need to be duplicatively stated in rule. As a second example, the Policy Guidance Document itself provides for the process a developer can employ to obtain MSGOT's approval and application of policy tools to lessen or forgive the portion of the mitigation obligation borne by the developer (see Section 3.6 beginning on page 68). The process is well described in the Policy Guidance Document, including the procedural step that states MSGOT would make the decisions, with the underlying legal requirement that MSGOT meetings be publicly noticed resting elsewhere. In a third example, the Habitat Quantification Tool Technical Manual describes the process a developer would follow if HQT results were suspect (e.g., developer undertakes a third level site visit to collect data and the program applies the HQT using the updated data). The process falls well short of MAPA's formal rulemaking process and can be implemented by the developer, the program, and MSGOT through the course of regular MSGOT meetings.

COMMENT 5: Two commenters stated that the terms "major version" and "minor version" were ambiguous, were not actually defined in the glossary of the mitigation system documents and created uncertainty. These commenters went on to state that what constituted a major vs. a minor change was unclear, the process was ill-defined and subject to potentially arbitrary decisions, and the nexus between major / minor changes and the public comment process as contemplated in the Policy Guidance Document was not clear.

RESPONSE TO COMMENT 5: The terms "major version" and "minor version" are defined in ARM 14.6.101(5) and 14.6.101(6), respectively. It is true that they are not expressly defined in the Policy Guidance Document or the Habitat Quantification Tool Technical Manual. While administrative rules take precedent over the

mitigation system documents, this oversight will be addressed at the earliest adaptive management review opportunity. Both mitigation system documents outline the adaptive management review process (see RESPONSE TO COMMENT 2 above) and clearly anticipate that some changes will be more common and routine in nature, while other, more significant changes may also be reasonably expected at this time because the program will be collecting and adding new credit and debit project data on a near-daily basis; because satellite imagery incorporated into the HQT will need to be replaced as new imagery becomes available; and because new, more refined science will become available and should be incorporated to reduce uncertainty.

The mitigation system documents and the administrative rules that describe the process for how the documents will change through time must be read in tandem (See RESPONSE TO COMMENT 4). MSGOT needs a method to record which version of the HQT and mitigation system documents were applied at the time of the program's analysis and its own decisions. Participants in the mitigation system will also need this information. Recordation of major and minor versions and the accompanying numbering system is the only means to implement other provisions of the rules, such as New Rule I (ARM 14.6.103(4)(a)) and New Rule II (ARM 14.6.104(7)(a)). Without versioning of the HQT and policies applied at the time decisions were made, the principles of grandfathering and finality of mitigation transactions could not be realized. Without a method and a process to manage change to the mitigation system documents, participants in the mitigation system (e.g., credit providers, developers, the program, and MSGOT) would not know what version of the HQT and Policy Guidance document formed the basis for any mitigation-related calculations and subsequent market-based financial transactions.

MSGOT seeks to balance the need for flexibility to implement the mitigation system documents so it can be responsive to new science, incorporate new data into the overall mitigation system on a project-by-project basis, correct editorial or technical errors, and refine analytical approaches with its needs to not only keep track of versions of both mitigation system documents as they evolve through time but also to establish a predictable, transparent method to do so that also fulfills MSGOT's public notice and comment requirements. MSGOT cannot implement the duties and powers assigned to it in its enabling statute and the Greater Sage Grouse Stewardship Act if it were in a perpetual state of formal administrative rulemaking. Decisions would be delayed, which in turn would delay developers' ability to obtain necessary state permits.

The rules require MSGOT to initiate formal rulemaking to incorporate major versions of the Habitat Quantification Tool Technical Manual by reference. This would occur after the adaptive management review, preparation of an adaptive management report, and opportunities for public comment during a publicly noticed MSGOT meeting. After any MSGOT decision to move forward with major changes and rulemaking, the public will have the ability to again review and comment on any proposed major version changes during the formal rulemaking process. For minor versions, both mitigation system documents outline an adaptive management

process that engages stakeholders and interested members of the public prior to completion of the adaptive management report for MSGOT and MSGOT discussion during a publicly noticed meeting.

Nonetheless, to address these commenters' concerns, language was added to these rules that requires minor versions of both mitigation system documents to be recorded by the program after a publicly announced MSGOT meeting and after accepting public comment. Lastly, MSGOT could be petitioned to initiate rulemaking or MSGOT could initiate formal rulemaking of its own accord at any time pursuant to the Montana Administrative Procedure Act.

COMMENT 6: One commenter believes the mitigation system documents ignore the Governor's Executive Order which states that tall structures may be located outside of the 0.6 mile buffer in cases of economic infeasibility. It is not clear in the proposed rules or the policy manual that the program will apply a buffer of 0.6 miles to tall structures when economic infeasibility is demonstrated.

RESPONSE TO COMMENT 6: This comment appears to be based on a very narrow and incomplete reading of Executive Order 12-2015, which in turn, leads to an incorrect understanding of not only Executive Order 12-2015 but also conflates how Executive Order 12-2015 and the policy tools contained in the Policy Guidance document work together. Executive Order 12-2015 establishes a "no surface occupancy" of 0.6 miles in Core Areas or 0.25 miles in General Habitat or Connectivity areas from active sage grouse leks for any new proposed disturbance, regardless of the type of disturbance. Observance of this stipulation is mandatory for all developers, and adherence to this stipulation is incentivized through site specific multipliers, as described in the Policy Document.

Attachment D of Executive Order 12-2015 also contains industry-specific requirements, in addition to the preamble statements, general principles, and guidance for how the conservation strategy applies to land uses and activities, included in the main body of Executive Order 12-2015 which are required of all developers who require state permits to implement a project. Except for Attachment D, due to its specificity, all attachments are also to be applied, as is relevant and appropriate for a particular development project. Executive Order 12-2015 also sets forth that new development projects will be required to follow the mitigation hierarchy.

Focusing on the Executive Order 12-2015 passage mentioned by the commenter for tall structures such as communication towers or overhead (power) transmission lines, the complete text of Attachment D, Core Area Stipulations, paragraph 6 reads as follows:

6. Overhead Power Lines and Communication Towers:

Power lines and communication towers should be sited to minimize negative impacts on sage grouse or their habitats.
When placement is demonstrated to be unavoidable:

- a. If economically feasible, power lines within 4 miles of active leks should be buried and communication towers should be located a minimum of 4 miles from active leks;
- b. If not economically feasible, then power lines and communication towers should be consolidated or co-located with existing above ground rights of way, such as roads or power lines, at least 0.6 miles from the perimeter of active leks;
- c. If co-location is not possible, the power lines and communication towers should be located as far as economically feasible from active leks and outside of the 0.6 mile active lek buffer.

If siting of overhead power lines is necessary within 2.0 miles of important breeding, brood-rearing, and winter habitat, follow the measures recommended by the Avian Power Line Interaction Committee to minimize collision potential and raptor perch sites or bury a portion of the line.

Anti-collision measures should be installed within 0.6 mile of the perimeter of known sage-grouse concentration areas such as leks and winter ranges, where icing conditions are unlikely to occur. If effective perch preventers are identified, they should be installed within 0.6 mile of known concentration areas.

Follow USFWS Best Management Practices for tall structures when erecting new communication towers. Communication towers should be constructed to preclude the need for guy wires; where guy wires are necessary, they should be fitted with anti-collision devices.

Burying existing overhead lines that have been identified as contributing to a decline in sage grouse populations will be considered as a mitigation option.

Electric utilities (including electric cooperatives) and the Avian Power Line Interaction Committee (which includes federal agencies and state wildlife agencies), have developed a set of Best Management Practices (BMPs) to guide construction, operation, and maintenance activities by electric utilities in sage grouse habitats. These BMPs should be applied to electric utility projects as appropriate.

The Program should conduct additional research into the challenges posed to sage grouse by overhead lines and communication towers and should bring that research to MSGOT for further consideration.

Executive Order 12-2015 is based on the best available science at the time of its 2015 signing. The newer mitigation system documents, and the HQT itself are also based on the best science available, with the stakeholders and the program incorporating scientific literature published through September 2018. Research and peer reviewed science is available specific to communications towers and overhead powerlines, which is summarized in Appendices C and D of the Habitat Quantification Tool Technical Manual.

Executive Order 12-2015, Paragraph 6, is the only industry-specific passage that contemplates consideration of economic feasibility when considering placement of structures. Consideration of economic infeasibility is incorporated into the Policy Guidance document and is the mechanism by which MSGOT considers economic feasibility when implementing Executive Order 12-2015.

The Policy Guidance Section 3.6 document provides that developers can seek MSGOT's approval for dispensation from their mitigation obligations when economic infeasibility is shown. A variety of policy tools are outlined in the Policy Guidance document, as well as the process developers should follow to obtain relief from MSGOT. MSGOT can weigh and balance impacts on sage grouse due to specific projects, but also when those specific projects are sited in various locations relative to active sage grouse leks, the mitigation obligation determined through application of the HQT and Policy Document, and information provided by the developer to support its request for dispensation.

Taken together, Executive Order 12-2015 and the Greater Sage Grouse Stewardship Act demonstrate that Montana contemplates mitigating impacts of development to sage grouse populations and habitat as an integral component of the conservation strategy and observance of the mitigation hierarchy is required, including compensatory mitigation, which the Montana Legislature found was consistent with incentivizing conservation.

It has been recognized since at least 2013 that development will impact sage grouse habitat even if all stipulations of Executive Order 12-2015 are followed. Mitigation is an integral tool to offset impacts so that Montana can continue to issue permits for economic development, resource extraction, and infrastructure projects, even in Core Areas. Mitigation is viewed as a viable alternative to denying state permits.

COMMENT 7: One commenter objected to the requirements in New Rule I (ARM 14.6.103(4)(a)) and New Rule II (ARM 14.6.104(7)(a)) that written approval of changes in the number of calculated credits or debits also be obtained from MSGOT, the credit provider, the project developer, and any affected third party. MSGOT has authority to initiate rulemaking and MSGOT already represents debit and credit stakeholders, as well as various state Executive and Legislative parties. The rule's requirement that any affected third party provide written approval constitutes an effective veto. Even though MSGOT has authority to initiate rulemaking, it would be stymied.

RESPONSE TO COMMENT 7: New Rule I (ARM 14.6.103(4)(a)) and New Rule II (ARM 14.6.104(7)(a)) refer to specific credit or debit projects, not rulemaking. Once the HQT has been applied to calculate functional habitat gains or losses for a specific project, the rule provides that written approval is required by MSGOT, the project developer and the credit provider before the HQT results could be changed that would cause an increase or decrease in functional habitat. Similarly, once the Policy Guidance document has been used to determine the total number of credits or debits for a specific project, the rule provides that written approval is required by MSGOT, the project developer, and the credit provider before the number of debits or credits could be changed that would cause an increase or decrease in the number of debits owed or credits created. MSGOT seeks to provide clarity in the administrative rules that it cannot unilaterally change HQT results, the number of debits owed or mitigation obligation, or the number of credits created from a conservation project. MSGOT also seeks to recognize that once negotiated, mitigation transactions can be considered final, unless all parties to the transaction agree to amend the transaction in writing. MSGOT agrees that the proposed language was ambiguous and overly broad. Language has been added to both New Rule I (ARM 14.6.103(4)(a)) and New Rule II (ARM 14.6.104(7)(a)) to clarify that the rule pertains to a specific project, and written approval is required from every party to that mitigation transaction.

Lastly, MSGOT does not represent credit providers or developers in mitigation transactions. MSGOT's role is to implement Executive Order 12-2015 and the Greater Sage-Grouse Stewardship Act, consistent with the duties and powers granted by the Montana Legislature.

COMMENT 8: One commenter alternatively wants MSGOT to consider whether to initiate rulemaking on a quarterly basis but also suggests that MSGOT should have flexibility to make decisions and be agile without having to initiate formal rulemaking. Further, the commenter suggested the rules establish specific timelines for MSGOT decisions with respect to rulemaking, including text requiring MSGOT to complete rulemaking within 180 days.

RESPONSE TO COMMENT 8: MSGOT appreciates the commenter's awareness. As stated above, MSGOT seeks to balance the need for flexibility to make decisions after public notice and comment with the certainty and predictability that mitigation system participants need in order to plan either development projects that result in debits or conservation projects that create credits, respectively. See RESPONSE TO COMMENT 2, 4, and 5 above.

The Montana Administrative Procedure Act provides detailed statutory guidance with respect to administrative rulemaking and timelines for steps in the rulemaking process. In addition, the Montana Administrative Procedure Act establishes the requirements for the validity of rules, including the requirement that an adoption notice must be published within six months of filing the proposal notice, or else the entity proposing the rules must restart the rulemaking process from the beginning.

MSGOT is required to implement, and will adhere to the requirements of, the Montana Administrative Procedure Act.

Governor's Office

/s/ Raphael Graybill
RAPHAEL GRAYBILL
Rule Reviewer
Governor's Office

/s/ Patrick Holmes
PATRICK HOLMES
Natural Resource Policy Advisor

Certified to the Secretary of State January 2, 2019.

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.150.401 fees, 24.150.505	)	REPEAL
inactive status, 24.150.507 military)	
training or experience, 24.150.2201)	
continuing education requirements,)	
and 24.150.2301 unprofessional)	
conduct, and the repeal of ARM)	
24.150.2203 proof of attendance)	

TO: All Concerned Persons

1. On October 5, 2018, the Board of Hearing Aid Dispensers (board) published MAR Notice No. 24-150-40 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1948 of the 2018 Montana Administrative Register, Issue No. 19.

2. On October 30, 2018, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. No comments were received by the November 2, 2018, deadline.

3. The board has amended ARM 24.150.401, 24.150.505, 24.150.507, 24.150.2201, and 24.150.2301 exactly as proposed.

4. The board has repealed ARM 24.150.2203 exactly as proposed.

BOARD OF HEARING AID DISPENSERS
MICHAEL SPINTI, PRESIDING OFFICER

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

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

Certified to the Secretary of State January 2, 2019.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.207.401 fees, 24.207.404	)	ADOPTION, AND REPEAL
appraisal review - USPAP exemption,)	
24.207.406 definitions, 24.207.501)	
examination, 24.207.502 application)	
requirements, 24.207.504 approval of)	
qualifying and continuing education)	
courses, 24.207.508 ad valorem)	
appraisal experience, 24.207.509)	
qualifying experience, 24.207.515)	
inactive license/certification,)	
24.207.516 inactive to active license,)	
24.207.517 trainee requirements,)	
24.207.518 mentor requirements,)	
24.207.1501 registration and renewal)	
of appraisal management companies,)	
24.207.2101 continuing education -)	
compliance and auditing, 24.207.2301)	
unprofessional conduct for appraisers,)	
24.207.2305 unprofessional conduct)	
for appraisal management companies;)	
the adoption of New Rule I)	
incorporation by reference of the real)	
property appraiser qualification)	
criteria, New Rule II appraiser)	
reporting obligations to the board,)	
New Rule III appraisal management)	
company reporting obligations to the)	
board; and the repeal of ARM)	
24.207.403 regulatory reviews,)	
24.207.503 experience - number of)	
hours required, 24.207.505 qualifying)	
education requirements for licensed)	
real estate appraisers, 24.207.506)	
qualifying education requirements for)	
residential certification, 24.207.507)	
qualifying education requirements for)	
general certification, 24.207.510)	
scope of practice, 24.207.2102)	
continuing education noncompliance)	

TO: All Concerned Persons

1. On November 2, 2018, the Board of Real Estate Appraisers (board) published MAR Notice No. 24-207-42 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 2166 of the 2018 Montana Administrative Register, Issue No. 21.

2. On November 26, 2018, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the November 30, 2018, deadline.

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

COMMENT 1: Several commenters expressed concern with the amendment of ARM 24.207.401 to delete the renewal fee for Appraisal Management Companies (AMCs) having more than 200 engagements during the previous renewal cycle. The commenters believed the change will negate the "discount" provided to smaller AMCs and diminish available funding to adjudicate potential disciplinary cases.

RESPONSE 1: Currently, the board charges \$1,000 to AMCs with fewer than 200 engagements (small AMC) and \$3,000 to those with more than 200 engagements (large AMC). The proposed change will require all AMCs to pay what "smaller" AMCs have already been paying and therefore does not negate a "discount" provided to small AMCs. The board rejected a revenue-neutral approach to avoid imposing additional fees on small AMCs and conducted a five-year projection that demonstrated no significant impact on the board's funding, including funding to prosecute and adjudicate disciplinary cases. The two-tiered fee structure required the department to engage in additional programming and auditing of the number of engagements, and overall did not provide a benefit that outweighed its administrative burdens.

COMMENT 2: Two commenters were concerned that eliminating the \$450 fee required in ARM 24.207.401(2)(l) would diminish the funding available to the board to conduct audits of AMCs as required by statute.

RESPONSE 2: A drafting error was made in the initial notice by removing the \$450 fee from (2)(l) after the board decided to only strike the last phrase of (2)(l) regarding additional costs above \$450. Therefore, the board is not eliminating the fee and is amending the rule by adding (2)(h) to retain the \$450 fee. The board determined the audit is circumscribed in its scope and there is no reason to believe that the statutorily authorized audit to review procedures should expand beyond this cost.

COMMENT 3: The board received several comments regarding ARM 24.207.508 and the number of hours of mass appraisal or "ad valorem" experience the board should accept to meet the experience requirement. Some supported the proposed 80%, some wanted the percentage increased to 100%, and others wanted none of the experience to count.

Those wanting none of the experience to count argued that public welfare was at risk under the proposal. The commenters noted that supervisors of persons performing mass appraisals are not always certified appraisers and do not have the education necessary to mentor the candidate or sign an experience log. Others argued that "assessing" and "appraising" are different. Commenters were concerned regarding how the board would ensure that mass appraisals were performed in accordance with USPAP.

Commenters in favor of having mass appraisal experience count for all the required experience hours argued that the selection of 80% by the board was arbitrary, and noted that because it is difficult to maintain mentors, requiring 20% of the hours to be done under a mentor effectively allows no hours to count.

One commenter urged the board to outline a process by which an applicant would be assigned to a mentor to facilitate completion of 20% mentorship.

RESPONSE 3: Numerous individuals have reported difficulty in finding a supervisor/mentor. The board understands that the Appraisal Subcommittee is in the early stages of exploring virtual training to address this need. In the meantime, the board cannot require a mentor to supervise trainees.

The AQB unequivocally allows 100% of mass appraisal experience performed in conformance with USPAP standards 1, 2, 3, 4, 5, and/or 6 to count toward the experience requirement. Standards 5 and 6 address mass appraisals. The AQB thus recognizes that individuals applying under mass appraisal experience may not have their work supervised by a certified appraiser. Further, even if there is a difference between "appraising" and "assessing," the AQB recognizes the difference to be negligible or irrelevant. These conclusions are the legal consequences of the federal regulation of the profession.

The board is poised in its choice between adopting the AQB position on mass appraisal experience or to become stricter than the federal minimum. The board's tendency to count all or a substantial portion is indicated by the principle that all licensure qualifications are designed to establish minimum competency. Experience is just one of the measures of minimum competency. In addition to the number of hours of experience, an appraiser must also pass appraisal-specific education and an examination to become licensed. Together, these requirements ensure that a licensee achieves a level of minimum competency without unnecessarily restricting entry into the profession. In furtherance of continued competency, the board requires relevant continuing education and subjects the licensee to a complaint and disciplinary process – both minimum standards required by the AQB.

None of the comments elicited a basis for the board to change its preference toward counting all or a substantial portion of mass appraisal experience. However, the board concluded it had insufficient information to properly address how it will verify that mass appraisal experience conforms with USPAP. Therefore, the board is not proceeding with the amendments to ARM 24.207.508 and will refer this rule to a work group to study. The board will propose alternative amendments for public comment in a future rulemaking proposal.

COMMENT 4: One commenter expressed concern that other states may not reciprocate Montana licenses if Montana accepts ad valorem experience.

RESPONSE 4: The board cannot issue an advisory opinion on or predict another licensing agency's decision-making. The board can only reiterate that the AQB does not place a limit on the amount of ad valorem/mass appraisal experience that may be used toward the experience requirement provided the experience complies with USPAP Standards 5 and 6. For appraisers performing federally related transactions, Policy Statement 5 of the Appraisal Subcommittee requires states to adopt policies to issue reciprocal credentials to appraisers who hold valid credentials from a Title XI-compliant state if the credentialing requirements of the home state meet or exceed those of the reciprocal credentialing state. The board understands the AQB reciprocity policy to be interpreted broadly, rather than restrictively.

COMMENT 5: Several commenters opposed the amendment of ARM 24.207.518 believing it would allow licensed appraisers to become mentors. The commenters were also concerned that amending the rule would allow an appraiser to become a mentor if they have not been a certified appraiser for at least three years.

RESPONSE 5: AQB qualifications criteria clearly specifies that only certified appraisers may be a mentor, and the mentor must have been an appraiser for at least three years before being allowed to mentor a trainee. However, because (1) inadvertently included the term "licensed," the board is amending the section to remove the incorrect term.

COMMENT 6: Two commenters supported the incorporation by reference of the Appraiser Qualifications Board (AQB) criteria in New Rule I because it standardizes the requirements for licensure and may streamline the process for licensure.

RESPONSE 6: The board agrees with the commenters and is adopting New Rule I as proposed.

COMMENT 7: Two commenters opposed the incorporation of the Appraiser Qualifications Board (AQB) criteria, asserting there is no shortage of appraisers in the state, and that adoption of the current AQB qualifications criteria will erode the quality of appraising in the state and erode public trust.

RESPONSE 7: The board disagrees with the commenters. While the board has in the past discussed availability of appraisers in Montana and nationwide, the board did not focus its decision to adopt the AQB criteria by reference on this factor. Rather, the board focused on the inefficiency of replicating or modifying the standards that are otherwise specified by the AQB of the Appraisal Foundation, an organization whose federally legislated mandate is to set minimum standards.

The AQB published numerous exposure drafts and carefully considered comments and statistical analysis before adopting the current qualifications criteria. It is the board mission to protect public safety and welfare by enacting regulations that target legitimate risks, but without unnecessarily interfering with job creation, competition, and economic growth. While a state may exceed the AQB minimum standards, the board finds no compelling evidence to do so. The board finds

justification lacking to maintain a set of standards in Montana that exceed the AQB standards.

The board asserts that it is incumbent on the states to minimize the variations in professional standards to facilitate license mobility and therefore minimize the analysis required when considering an application by reciprocity. The board believes that time not spent on these analytics and curating a set of separate administrative rules can be devoted to enforcement activities.

COMMENT 8: Many commenters believed the adoption of New Rule III to change the AMC reporting period from 30 days to 10 days will create a significant administrative burden for AMCs. The commenters stated there are various examples within Montana regulations where licensees are granted a 30-day reporting period and ask for the same consideration in this rule.

The commenters requested the board clarify that (1)(a) through (c) will not require AMCs to submit a new application whenever there is a change in a controlling person, contact person, or owner. The commenters also expressed concern that (1)(e) appears to require the reporting of all litigation even when not associated with the AMC obligations to the state. The commenters requested the board clarify that AMCs must report only those legal or disciplinary judgments against the AMC, the controlling person, or contact person.

RESPONSE 8: The department is standardizing the reporting period for all types of reportable information to provide internal consistency and to convey the urgency of updating the department regarding the information. The 10-day notification is urgent because of the good moral character and background check the department is required to perform on particular affiliates of an AMC.

The AMC will not be required to fill out a new application if there is a change of owner, controlling person, or contact person. However, 37-54-503 and 37-54-504, MCA, require these affiliates, i.e., an owner of an AMC or a contact individual, including a controlling person of the company designed as a contact individual, to be of good moral character and submit to a background examination. The board must also inquire as to licensure in good standing of such persons. Therefore, as part of the notification of change, it is necessary that the individual complete a form and the board to conduct the background examination to ensure that the qualifications stated in the statute are met.

Section 37-1-105, MCA, requires applicants for licensure and renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. The board agrees with the commenters that the proposed language on reporting may be overly broad. The comment suggests overall that the rule is not clearly worded. The board is therefore not adopting New Rule III at this time and will include a more clearly worded version in a future rulemaking notice.

4. The board has amended ARM 24.207.404, 24.207.406, 24.207.501, 24.207.502, 24.207.504, 24.207.509, 24.207.515, 24.207.516, 24.207.517, 24.207.1501, 24.207.2101, 24.207.2301, and 24.207.2305 exactly as proposed.

5. The board has adopted New Rule II (24.207.519) exactly as proposed.

6. The board has repealed ARM 24.207.403, 24.207.503, 24.207.505, 24.207.506, 24.207.507, 24.207.510, and 24.207.2102 exactly as proposed.

7. The board has amended ARM 24.207.401 and 24.207.518 with the following changes, stricken matter interlined, new matter underlined:

24.207.401 FEES (1) through (2)(g) remain as proposed.

(h) All audited registered appraisal management companies shall pay an audit fee in the amount of \$450 within 30 days of receiving notification of selection for audit.

(3) remains as proposed.

AUTH: 37-1-131, 37-1-134, 37-54-105, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-54-105, 37-54-112, 37-54-212, 37-54-302, 37-54-310, MCA

24.207.518 MENTOR REQUIREMENTS (1) A ~~licensed~~ or certified appraiser who intends to supervise a trainee shall first obtain a license endorsement by applying to the board as required in ARM 24.207.502.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, MCA

8. During the preparation of this notice, a typographical error was discovered in one of the authorizing citations for New Rule I (24.207.203). Therefore, the board has corrected the authorizing statute with the following change, stricken matter interlined, new matter underlined:

NEW RULE I (24.207.203) INCORPORATION BY REFERENCE OF THE REAL PROPERTY APPRAISER QUALIFICATION CRITERIA (1) through (3) remain as proposed.

AUTH: 37-1-131, ~~37-43-105~~, 37-54-105, MCA

IMP: 37-1-131, 37-1-203, 37-1-321, 37-54-105, MCA

9. The board did not amend ARM 24.207.508.

10. The board did not adopt New Rule III.

BOARD OF REAL ESTATE APPRAISERS
THOMAS STEVENS, CERTIFIED
GENERAL APPRAISER
PRESIDING OFFICER

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

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

Certified to the Secretary of State January 2, 2019.

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 37.81.104, 37.81.304, and)
37.81.322 pertaining to Big Sky Rx)

TO: All Concerned Persons

1. On November 16, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-867 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2293 of the 2018 Montana Administrative Register, Issue Number 22.

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

3. No comments or testimony were received.

4. The department intends to apply these rule amendments retroactively to January 1, 2019. A retroactive application of the rule amendments does not result in a negative impact to any affected party.

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

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

Certified to the Secretary of State January 2, 2019.

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 hospice)
reimbursement)

TO: All Concerned Persons

1. On November 16, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-868 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2297 of the 2018 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 increases in the hospice reimbursement rates retroactively to October 1, 2018. Decreases in hospice rates will not be applied retroactively, but will be effective upon adoption of the proposed rule amendment.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State January 2, 2019.

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 37.111.339 pertaining to pools,)
spas, and other water features)

TO: All Concerned Persons

1. On November 16, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-871 pertaining the proposed amendment of the above-stated rule at page 2301 of the 2018 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 amendment retroactively to January 1, 2019. A retroactive application of the rule amendment does not result in a negative impact to any affected party.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State January 2, 2019.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On November 16, 2018, the Commissioner of Political Practices published MAR Notice No. 44-2-231 pertaining to the proposed amendment of the above-stated rule at page 2304 of the 2018 Montana Administrative Register, Issue Number 22.

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

3. No comments or testimony were received.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Jeffrey Mangan
Jeffrey Mangan
Commissioner

Certified to the Secretary of State January 2, 2019.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known
Subject

1. Consult ARM Topical Index.
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2018. This table includes notices in which those rules adopted during the period July 20, 2018, through December 31, 2018, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2018, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2018 Montana Administrative Registers.

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

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