

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of soliciting applications)	AMENDED NOTICE OF
for membership on a negotiated)	NEGOTIATED RULEMAKING
rulemaking committee to amend)	
ARM10.55.606 pertaining to the)	
procedures in determining)	
accreditation status using student)	
performance measures based on)	
results of the required statewide)	
assessments)	

TO: All Concerned Persons

1. On January 25, 2019, the Office of Public Instruction published MAR Notice No. 10-1-131, a Notice of Negotiated Rulemaking, at page 80 of the 2019 Montana Administrative Register, Issue Number 2. Paragraphs 6, 7, and 8 of the notice are being amended to extend the timeline for the negotiated rulemaking process. The following is the amended language for paragraphs 6, 7, and 8:

"6. The proposed working schedule for the negotiated rulemaking committee is as follows:

(a) On February 8, 2019, this notice will be published in the Montana Administrative Register (MAR). The notice will also be mailed to persons known to the agency to have an interest in this matter.

(b) Applications for membership on the negotiated rulemaking committee must be received no later than March 12, 2019. After receipt and consideration of the comments and applications, the agency will establish a negotiated rulemaking committee no later than March 27, 2019. The members selected to serve on the committee must be able to adequately represent the interests of the persons that will be significantly affected by the proposed rule amendment. The committee members will be notified in writing of their selection and receive an information packet.

(c) The negotiated rulemaking committee will convene its first meeting on April 4, 2019. Teleconferencing and e-mail correspondence will be utilized as much as possible. The committee will begin with an initial draft of the amendment at this meeting.

(d) The committee will transmit a report to the agency specifying the areas in which the committee has reached consensus and the issues that remain unresolved.

(e) Thereafter the Superintendent of Public Instruction will develop recommendations and present them to the Board of Public Education for formal rulemaking.

7. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to Linda Vrooman Peterson, lvpeterson@mt.gov, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, no later than March 12, 2019:

(a) the person's name or the nominee's name, address, and contact information including telephone or e-mail address where you can be contacted during the summer months and during the school year;

(b) evidence that the person or nominee represents any of the specific criteria of interest groups listed above;

(c) the name of the school district in which the nominee lives or works, and the relationship of the person or nominee to it;

(d) a commitment that the person or nominee will be able to participate in the negotiated rulemaking process and will actively participate in good faith in the development of the proposed rule amendment under consideration; and

(e) the ability of the person or nominee to cover committee participation costs (such as telephone calls, travel, and per diem expenses).

8. Interested parties may submit their views and comments concerning the proposed negotiated rulemaking process to Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, faxed to (406) 444-2893, or electronic mail to bemarlow@mt.gov no later than March 12, 2019."

2. All other paragraphs contained in the original Notice of Negotiated Rulemaking remain unchanged.

/s/ Kyle A. Moen

Kyle A. Moen
Rule Reviewer

/s/ Elsie Arntzen

Elsie Arntzen, Superintendent
Office of Public Instruction

Certified to the Secretary of State January 29, 2019.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 10.16.3010, 10.16.3011,) PROPOSED AMENDMENT
10.16.3022, and 10.16.3806)
pertaining to special education)

TO: All Concerned Persons

1. On March 12, 2019, at 2:00 p.m., the Superintendent of Public Instruction will hold a public hearing in the Superintendent's conference room, 1227 11th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Superintendent of Public Instruction will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of Public Instruction no later than 5:00 p.m. on March 5, 2019, to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-4402; fax (406) 444-2893; or e-mail bemarlow@mt.gov.

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

10.16.3010 CRITERIA FOR IDENTIFICATION OF A CHILD AGED THREE THROUGH FIVE EIGHT HAVING A DEVELOPMENTAL DELAY (1) remains the same.

- (a) at least three, four, or five and not yet nine years old; and
- (b) remains the same.

AUTH: 20-7-402, MCA
IMP: 20-7-401, 20-7-403, MCA

STATEMENT OF REASONABLE NECESSITY: Stakeholders in the educational community have expressed concerns regarding the transition of students into the elementary grades and the requirement that they be immediately evaluated to determine continued eligibility. For many students, their sixth birthday occurs very early in the school year and the student has not had the opportunity to adjust to the school setting when the IEP team is being required to conduct an evaluation to determine if another disability exists. Extending the age range for this category will allow students to continue to receive needed services during the early elementary years.

10.16.3011 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING

AUTISM ~~(1) The student may be identified as having autism if documentation supports the existence of a developmental disability that was generally evident before the student was three years of age and if the student has communication difficulties in verbal and nonverbal communication and social interaction.~~

~~(2) Assessments shall document the presence of significant delays in verbal and nonverbal communication and social interaction.~~

~~(a) Significant delays in verbal communication are manifested by at least one of the following:~~

~~(i) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime);~~

~~(ii) in students with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others.~~

~~(b) Significant delays in nonverbal communication are manifested by a marked impairment in the use of multiple nonverbal behaviors such as eye to eye gaze, facial expression, body postures, or gestures to regulate social interaction.~~

~~(c) Significant delays in social interaction are manifested by at least one of the following:~~

~~(i) failure to develop peer relationships appropriate to developmental levels;~~

~~(ii) lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., lack of showing, bringing or pointing out objects of interest);~~

~~(iii) lack of social or emotional reciprocity;~~

~~(iv) lack of varied, spontaneous, make-believe play or social imitative play appropriate to developmental level.~~

~~(3) Other characteristics often associated with autism may include restricted, repetitive and stereotyped patterns of behavior, interests and activities, as manifested by one or more of the following:~~

~~(a) Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;~~

~~(b) Apparently inflexible adherence to specific nonfunctional routines or rituals;~~

~~(c) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements);~~

~~(d) Persistent preoccupation with parts of objects.~~

~~(4) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (2) and (3) are met.~~

~~(5) The student may not be identified as having autism if the student's educational performance is adversely affected primarily because the student has an emotional disturbance.~~

(1) The student may be identified as having autism if the results of a comprehensive evaluation document significant difficulties in social communication and social interaction, and restricted and repetitive behaviors and interests.

(2) The characteristics below are those which most frequently occur with the student but may not occur in every situation.

(a) Significant difficulties in social communication must be documented for at least six of the following characteristics:

- (i) does not initiate or maintain eye contact while interacting with others;
- (ii) does not use or has limited use of facial expressions to communicate with others;
- (iii) has difficulty identifying and/or understanding the communicative intent of another person's facial expressions;
- (iv) does not use gestures to direct attention to an object (for example, showing, bringing, or pointing out objects of interest);
- (v) does not use gestures for communication;
- (vi) does not respond to or misinterprets other's use of gestures;
- (vii) does not notice or misinterprets other's use of body language;
- (viii) does not use or has inconsistent use of own body language;
- (ix) does not use verbal language for communication and social interaction;
- (x) echolalia (immediate and/or delayed) is present;
- (xi) has verbal language but has difficulties in expressive verbal communication;
- (xii) has verbal language but has difficulties in receptive verbal communication; or
- (xiii) interpretation of other's verbal communication is often concrete and literal (for example: does not understand idioms or sarcasm).

(b) Significant difficulties in social interaction must be documented for at least five of the following characteristics:

- (i) does not seek to share enjoyment, interests, or achievements with others;
- (ii) does not initiate social interaction unless seeking preferred items or help;
- (iii) no or minimal response to social interactions initiated by others;
- (iv) has difficulty initiating a conversation on non-preferred topics;
- (v) has difficulty sustaining a conversation on non-preferred topics;
- (vi) has difficulty explaining another person's perspective in verbal and/or non verbal communication. (e.g., what other people are thinking or feeling);
- (vii) does not join play activities of others (solitary play preferred);
- (viii) play lacks elements of make-believe (e.g., using blocks as food);
- (ix) has difficulty in participating in make-believe play with others; or
- (x) does not engage in social imitative play (such as playacting, fantasy characters, animals, pretending adult role).

(c) Significant difficulties in restricted and repetitive behaviors and interests must be documented for at least three of the following characteristics:

- (i) makes repeated vocalizations or verbalizations (e.g., repeats same word, phrase, or sound);
- (ii) persistent preoccupation with specific objects or parts of objects;
- (iii) engages in repeated, repetitive movements with objects such as sticks or string, lining up toys, flipping objects, spinning objects;
- (iv) preoccupation with particular interests causes difficulties in social interaction and/or academic performance;
- (v) resists when asked to discontinue preferred or special interest activity;

(vi) prefers consistency and resists expected and/or unexpected changes (for example: changing activities, leaving activity unfinished, changes in routine or daily schedule); or

(vii) engages in repetitive physical behaviors such as body rocking, spinning self, finger flicking, and/or hand flapping.

(3) A student must have the minimum number of characteristics in all three areas above to be identified as a student with autism.

(4) A student who has the minimum number of required characteristics in social communication and social interaction, and restricted and repetitive behaviors and interests, shall be identified as a student with Autism Type 1. A student who has more than the minimum number of required characteristics in social communication and social interaction, and restricted and repetitive behaviors and interests, shall be identified as a student with Autism Type 2.

AUTH: 20-7-402, MCA

IMP: 20-7-401, 20-7-403, 20-7-414, MCA

STATEMENT OF REASONABLE NECESSITY: The current criteria for identification as a student with autism are not consistent with the criteria used outside of the school system. The current criteria are difficult to interpret and lead to confusion in the identification of children with disabilities. The proposed criteria have been developed with a tremendous amount of input from stakeholders and are felt to be more widely understood and to lead to more accurate and consistent identification of children with disabilities.

10.16.3022 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING VISUAL IMPAIRMENT (1) remains the same.

~~(a) a visual acuity of 20/70 or less in the better eye with correction or field of vision which at its widest diameter subtends an angle of no greater than 20 degrees in the better eye with correction; an impairment in vision that, even with correction, adversely affects the student's educational performance; or~~

(b) a medically indicated expectation of visual deterioration that would qualify the child as having a visual acuity impairment as described in (1)(a).

(2) The term "visual impairment" includes both partial sight and blindness.

AUTH: 20-7-402, MCA

IMP: 20-7-401, 20-7-403, 20-7-471, MCA

STATEMENT OF REASONABLE NECESSITY: Recent guidance from the U.S. Department of Education indicated that a state may not have criteria for identification as a student with a visual impairment that are more limiting than the criteria in the definition provided at CFR 300.8 (13).

10.16.3806 SPECIAL EDUCATION ALLOWABLE COSTS-- INSTRUCTIONAL SERVICES (1) through (1)(f)(i) remain the same.

(ii) ~~travel to in-state child study evaluation report team meetings or in-state IEP meetings;~~

(iii) and (iv) remain the same.

AUTH: 20-7-431, MCA

IMP: 20-7-431, MCA

STATEMENT OF REASONABLE NECESSITY: The language of this rule contained a reference to a process that was replaced in 2007. This change updates the language to reflect current requirements.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-4402; fax (406) 444-2893; or e-mail bemarlow@mt.gov, and must be received no later than 5:00 p.m., March 12, 2019.

5. Kyle A. Moen, Chief Legal Counsel for the Superintendent of Public Instruction, has been designated to preside over and conduct this hearing.

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

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

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

/s/ Kyle A. Moen
Kyle A. Moen
Rule Reviewer

/s/ Elsie Arntzen
Elsie Arntzen
Superintendent of Public Instruction

Certified to the Secretary of State January 29, 2019.

BEFORE THE BOARD OF ATHLETIC TRAINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.118.301 definitions,)
24.118.402 fee schedule,)
24.118.2101 renewals, 24.118.2301)
unprofessional conduct, and the)
repeal of 24.118.507 limit on)
nonlicensee conduct)

TO: All Concerned Persons

1. On March 4, 2019, at 11:00 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 Athletic Trainers no later than 5:00 p.m., on February 25, 2019, to advise us of the nature of the accommodation that you need. Please contact Rhonda Morgan, Board of Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; or dlibsdatr@mt.gov (board's e-mail).

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

24.118.301 DEFINITIONS (1) remains the same.

(a) "Approved clinical instructor" means a BOC certified athletic trainer, licensed physician, or other individual credentialed in a health care profession, for no less than one year and ~~who~~:

(i) who is not currently enrolled in the entry level athletic training education program at the instructor's institution; and

(ii) whose training curriculum follows the standards of the Commission on Accreditation of Athletic Training Education (CAATE), ~~June 30, 2008~~ July 1, 2012 edition, which are adopted and incorporated by reference. A copy of the CAATE standards may be obtained through the Board of Athletic Trainers, 301 S. Park Avenue, P.O. Box 200513, Helena, Montana, 59620-0513.

(b) and (c) remain the same.

(d) "Clinical instructor educator" means a clinical instructor educator as defined by the CAATE standards, ~~June 30, 2008~~ July 1, 2012 edition, which are adopted and incorporated by reference. A copy of the CAATE standards may be

obtained through the Board of Athletic Trainers, 301 S. Park Avenue, P.O. Box 200513, Helena, Montana, 59620-0513. A clinical instructor educator must also:
(i) through (g) remain the same.

AUTH: 37-36-102, MCA
IMP: 37-36-101, 37-36-203, MCA

REASON: The board determined it is reasonably necessary to update this rule by adopting and incorporating by reference the current 2012 edition of the Commission on Accreditation of Athletic Training Education (CAATE) standards.

24.118.402 FEE SCHEDULE

- (1) remains the same.
- (2) License renewal fee 475 75
- (3) and (4) remain the same.

AUTH: 37-1-134, 37-36-102, MCA
IMP: 37-1-134, 37-36-201, 37-36-202, MCA

REASON: The board authorized a 100 percent abatement of fees in the 2016 and 2018 renewal periods, as the board's cash balance was exceeding twice the program's annual appropriation, pursuant to 17-2-302, MCA. Because revenue continues to be higher than expenses, the board has determined that a decrease in the renewal fee is warranted to maintain the cash balance below the limit and comply with 17-2-302, MCA. The board estimates that the proposed fee change will affect approximately 139 persons and decrease annual revenue by \$13,900.

- 24.118.2101 RENEWALS (1) remains the same.
~~(2) Renewal notices will be sent as specified in ARM 24.101.414.~~
(3) through (5) remain the same but are renumbered (2) through (4).

AUTH: 37-1-131, 37-36-102, MCA
IMP: 37-1-131, 37-1-141, 37-1-309, 37-36-202, MCA

REASON: The board determined it is reasonably necessary to delete (2) to align with current standardized renewal and application procedures and because the department repealed ARM 24.101.414 in 2015.

24.118.2301 UNPROFESSIONAL CONDUCT (1) The BOC's Athletic Trainers Standards of Professional Practice, implemented ~~January 1, 2006~~ January 2018, are adopted and incorporated by reference. A copy of the BOC Standards of Professional Practice may be obtained through the Board of Athletic Trainers, 301 S. Park Avenue, P.O. Box 200513, Helena, Montana, 59620-0513. Violation of BOC practice standards or codes of professional responsibility may be grounds for discipline.

- (2) through (3)(t) remain the same.

AUTH: 37-1-319, 37-36-102, MCA
IMP: 37-1-316, 37-1-319, 37-36-202, MCA

REASON: It is necessary to amend (1) to adopt and incorporate by reference the current 2018 version of the BOC's Athletic Trainers Standards of Professional Practice regarding unprofessional conduct of licensees.

4. The rule proposed to be repealed is as follows:

24.118.507 LIMIT ON NONLICENSEE CONDUCT

AUTH: 37-1-131, 37-36-102, MCA
IMP: 37-1-131, 37-36-101, 37-36-203, 37-36-204, MCA

REASON: The board determined that 37-36-203, MCA, already allows for exemptions and addresses preventative care. Additionally, the title and content may indicate that the board is trying to regulate individuals who do not fall under the definition of athletic trainer. The board concluded this rule is not necessary to define what preventative care or first aid includes, especially since there are ever-changing procedures and it is difficult to keep up with the changes. Further, the definition of athletic training at 37-36-101, MCA, adequately describes the scope of practice and addresses preventative care. The board is repealing this rule as unnecessary.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or e-mail to dlibsdatr.mt.gov, and must be received no later than 5:00 p.m., March 8, 2019.

6. An electronic copy of this notice of public hearing is available at athletictrainer.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.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2323; e-mailed to dlibsdatr@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.118.301, 24.118.402, 24.118.2101, and 24.118.2301 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 24.118.507 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; facsimile (406) 841-2323; or to dlibsdatr@mt.gov.

10. Rhonda Morgan, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF ATHLETIC TRAINERS
JANET TRETHERWEY, 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 29, 2019.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.50.1612, 17.50.1617, 17.50.1618,)	
17.55.109, 17.56.507, and 17.56.608)	(WASTE MANAGEMENT)
pertaining to adoption by reference the)	(REMEDICATION)
most current version of the Montana)	(PETROLEUM TANKS)
Risk-Based Corrective Action (RBCA))	
guidance for Petroleum Releases)	

TO: All Concerned Persons

1. On December 21, 2018, the Department of Environmental Quality published MAR Notice No. 17-401, pertaining to the proposed amendment of the above-stated rules at page 2424 of the 2018 Montana Administrative Register, Issue No. 24.
2. No public comments or testimony were received.
3. The department has amended the above-stated rules exactly as proposed.

Reviewed by:	DEPARTMENT OF ENVIRONMENTAL QUALITY
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<u>/s/ Edward Hayes</u>	BY: <u>/s/ Shaun McGrath</u>
EDWARD HAYES	Shaun McGrath
Rule Reviewer	Director

Certified to the Secretary of State January 29, 2019.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 18.8.1301 pertaining to motor)
carrier services electronic weigh)
station bypass systems)

TO: All Concerned Persons

1. On December 21, 2018, the Department of Transportation published MAR Notice No. 18-172 pertaining to the proposed amendment of the above-stated rule at page 2479 of the 2018 Montana Administrative Register, Issue Number 24.

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

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

COMMENT #1: One comment was received asking whether ARM 18.8.1301(3)(d) covers "triples," since they are not in excess of 110 feet.

RESPONSE #1: The proposed amendment to ARM 18.8.1301(3)(d) will allow "triples" to bypass an open weigh station when the truck driver receives a bypass signal, as the amendment only requires overlength vehicles greater than 110 feet to enter an open weighing location, and "triples" are not greater than 110 feet.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State January 29, 2019.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rules I through XI pertaining to the) AMENDMENT
third-party CDL skills testing program)
and the amendment of ARM 23.3.502)
pertaining to commercial driver's)
license testing)

TO: All Concerned Persons

1. On September 7, 2018, the Department of Justice published MAR Notice No. 23-3-253 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1766 of the 2018 Montana Administrative Register, Issue Number 17.

2. The department has adopted the following rules as proposed: New Rule I (23.3.560), New Rule II (23.3.561), New Rule III (23.3.562), New Rule IV (23.3.563), New Rule V (23.3.564), New Rule VI (23.3.565), New Rule VII (23.3.566), New Rule VIII (23.3.567), New Rule X (23.3.569), New Rule XI (23.3.570), and amended ARM 23.3.502 as proposed.

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

NEW RULE IX (23.3.568) TEST SCHEDULING, RECORDKEEPING, AND TRANSFERRING CDL SKILLS TEST RESULTS (1) through (7) remain as proposed.

(8) ~~The applicant must wait seven days before being eligible to retake any unsuccessfully completed component of the CDL skills test~~ If an applicant fails and seeks to retake the vehicle inspection or basic controls skills component of the CDL skills test, the examiner must schedule in CSTIMS the subsequent testing appointment at least two days before the test.

(9) If an applicant fails and seeks to retake the road test, the examiner must schedule in CSTIMS the subsequent testing appointment at least six days before the test.

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

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

Comment 1: A number of commenters objected to the requirement that an applicant wait seven days before being eligible to retake any unsuccessfully completed CDL skills test.

Response 1: The department agrees in part and disagrees in part with this comment. Federal regulations require a third-party tester to submit a schedule of CDL skills testing appointments to the department no later than two business days before each test. The department agrees to reduce the number of days that an individual has to wait to re-take the vehicle inspection and basic skills components of the CDL skills test. The department declines to reduce the waiting time when an applicant fails the road test for a variety of reasons, including that it is important to give an applicant additional time to practice before testing and that the waiting time corresponds to the requirements for the three components that are given by state examiners.

Comment 2: There were various comments about the timing of written tests, the ability of the department to accept out-of-state test results for an individual who was issued a Montana learner permit, and items that would be covered during contract negotiation, including tablet technical specifications.

Response 2: These comments are outside the scope of the proposed rules and the department cannot agree or disagree with them.

/s/ Hannah Tokerud
Hannah Tokerud
Rule Reviewer

/s/ Timothy C. Fox
Timothy C. Fox
Attorney General
Department of Justice

Certified to the Secretary of State January 29, 2019.

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.129.401 fees, 24.129.610)
inactive status, and 24.129.2101)
continuing education requirements)

TO: All Concerned Persons

1. On October 5, 2018, the Board of Clinical Laboratory Science Practitioners published MAR Notice No. 24-129-18 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1943 of the 2018 Montana Administrative Register, Issue No. 19.

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

3. The board has amended ARM 24.129.401, 24.129.610, and 24.129.2101 exactly as proposed.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
VICKI RICE, 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 29, 2019.

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

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

TO: All Concerned Persons

1. On December 7, 2018, the Department of Public Service Regulation published MAR Notice No. 38-5-242 pertaining to the proposed amendment of the above-stated rules at page 2366 of the 2018 Montana Administrative Register, Issue Number 23.

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

3. No comments or testimony were received.

/s/ JUSTIN KRASKE
JUSTIN KRASKE
Rule Reviewer

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

Certified to the Secretary of State January 29, 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 August 10, 2018, through January 25, 2019, 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 or 2019 Montana Administrative Registers.

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