

MONTANA ADMINISTRATIVE REGISTER

2019 ISSUE NO. 13
JULY 5, 2019
PAGES 903-986



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
2.13.301, 2.13.304, 2.13.305, 2.13.310,	)	AMENDMENT AND EXTENSION OF
and 2.13.313, pertaining to public safety	)	COMMENT PERIOD
answering point (PSAP) certification and)	
funding	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On May 24, 2019, the Department of Administration published MAR Notice No. 2-13-585 pertaining to the proposed amendment of the above-stated rules at page 558 of the 2019 Montana Administrative Register, Issue Number 10. The Department of Administration inadvertently failed to make the required sponsor notification when beginning work on the rule amendments (2-4-302(2), MCA). The department has subsequently made the required sponsor notification, and is extending the comment period in this notice.

2. The Department of Administration 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 Administration no later than 5:00 p.m. on July 15, 2019, to advise us of the nature of the accommodation that you need. Please contact Rhonda Sullivan, Department of Administration, Public Safety Communications Bureau, 1400 8th Ave., P.O. Box 200113, Helena, Montana 59620; telephone (406) 444-2420; fax (406) 444-2701; Montana Relay Service 711; or e-mail rsullivan@mt.gov.

3. The rules proposed to be amended remain the same as in the original proposal notice.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action to Rhonda Sullivan, Department of Administration, Public Safety Communications Bureau, 1400 8th Ave., P.O. Box 200113, Helena, Montana 59620; telephone (406) 444-2420; fax (406) 444-2701; or e-mail rsullivan@mt.gov, and must be received no later than 5:00 p.m., July 26, 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 the person listed in 4 above no later than 5:00 p.m., July 26, 2019.

6. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Frank Garner, was contacted on June 20, 2019, by email.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

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

Certified to the Secretary of State June 25, 2019.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 4.10.701, 4.10.709, 4.10.807,	)	PROPOSED AMENDMENT AND
4.10.1009, 4.10.1803, 4.10.1804, and	)	REPEAL
4.10.1806 and repeal of ARM)	
4.10.702 pertaining to pesticide)	
registrations, worker protection)	
standards, containers and disposal)	
program)	

TO: All Concerned Persons

1. On July 30, 2019, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at 302 N. Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on July 26, 2019, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov.

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

4.10.701 GENERAL REGISTRATION REQUIREMENTS ~~(1) The department hereby establishes the standards of restriction for pesticides to be registered, re-registered, sold, distributed, offered for sale, purchased, exchanged, bartered, given away, used, or applied in the state. Sections 80-8-201 (3) and 80-8-105 (2) (a), (b), and (3) of the Act allows the department to restrict pesticides to prevent damage or injury to:~~

~~(a) persons, animals, or pollinating insects from the effect of drift or from careless application;~~

~~(b) the environment;~~

~~(c) plants, including forage plants;~~

~~(d) wildlife; and~~

~~(e) fish and other aquatic life.~~

~~These rules establish standards for requiring pesticides to be registered in the state, to be classified as either restricted or general use pesticides by the department and prohibits the sale of restricted pesticides by any person to another person who has not been certified by the department to purchase, use, or apply the pesticide. It shall~~

~~be unlawful to make available for use or to use any pesticide, whether registered or not, classified for restricted use to any person other than a certified applicator except as other exempted by the Act or rules adopted thereunder.~~

(1) All persons selling, distributing, offering for sale, exchanging, giving away, bartering, using, or applying pesticides must follow label directions and labeling requirements. Only persons certified by the department may purchase, use, and apply restricted use pesticides. It is unlawful to make a restricted pesticide available for use to anyone who is not a certified applicator unless they are allowed such use in law or by rule.

(2) Only certified applicators or those under their direct supervision may use restricted use pesticides. The department may impose other restrictions, such as the type of applicator who may use the pesticide, or the time and place that the pesticide(s) may be used.

(3) Pesticides registered in the state are classified by the department as either restricted use or general. The department may classify a pesticide as restricted use if it determines that, without regulatory restrictions, the pesticide would cause unreasonable adverse effects to the environment, animals, or humans. Additional registration restrictions will be established and adopted by the department in rule.

(4) In addition to the requirements set forth in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), pesticide labeling must also meet state standards set forth in (5) through (7).

(5) Any pesticide exempted from registration under the provisions of section 18 of FIFRA must provide the department with an application in accordance with Title 40 of the Code of Federal Regulations (CFR), Part 166.

(a) Pesticides distributed under section 18 of FIFRA must include department-approved labels prior to distribution. The label must include all conditions granting emergency exemption and all other required items determined by the department. The department may establish additional requirements for registration of section 18 pesticides.

(b) Documents granting emergency exemptions may be used in lieu of labeling in situations where a label cannot be developed and approved prior to the intended use period. Conditions submitted as part of the granting document and any attached or associated documentation from the department may be considered labeling for the purpose of enforcement.

(6) Pesticides registered under the provisions of section 24(c) of FIFRA must provide the department with an application in accordance with 40 CFR, Part 162.

(a) Additional requirements for the registration of section 24(c) pesticides may be established by the department.

(7) Minimum risk pesticides must meet the provisions listed in 40 CFR, Part 152.25(f) of FIFRA. These items must also meet the requirements of the department and may be subject to refusal, suspension, or cancellation per 80-8-201, MCA. Items required by FIFRA and the state include:

(a) label(s);

(b) safety data sheet(s);

(c) statement of formula(s);

(d) efficacy data, including test methods that substantiate any pesticidal claims that appear on the product label may be required; and

(e) all claims on the manufacturer's website comply with the same conditions required of the product label.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: Proposed amendments to ARM 4.10.701 modify grammar and formatting to comply with Secretary of State Administrative Rules of Montana requirements. Redundant language found in both ARM 4.10.702 and 80-8-105, MCA was removed to provide clear, logical content.

4.10.709 USE OF PESTICIDES ON PEST INFESTATIONS IN ALFALFA SEED CROPS ~~(1) The pesticide Pirimor 50-DF (pirimicarb) is permitted for use on alfalfa seed as specified under the authority of Section 3(c)(7)(C) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. Additionally, several pesticides~~

(1) Pesticides registered for use in Montana under ~~Section~~ section 24(c) of FIFRA for use on alfalfa seed only are covered by this rule. The use of these pesticide products is not permitted on fields producing alfalfa for livestock feed and no portion of the treated field, including seed, seed screening, hay forage or stubble, may be used for human food or animal feed.

(2) The current year's treated alfalfa seed crop may not be used or distributed for animal feed purposes such as cut for hay, green chop, pellets, meal, or stubble; nor can grazing take place on the current year's treated alfalfa seed crops.

(3) Screenings or other crop byproducts ~~shall not~~ cannot enter feed channels by distribution and/or direct use. All alfalfa seed screenings and/or crop byproducts that were treated with ~~Pirimor 50-DF~~ or any of the ~~FIFRA Section~~ section 24(c) of FIFRA pesticides for alfalfa seed production only must be immediately removed from the feed market, and disposed of in such a manner that they cannot be distributed or used for feed or food purposes. The alfalfa seed conditioner ~~shall~~ must keep records of all alfalfa seed screenings and their disposal (site, method, amount and type of material, date of shipment) and ~~shall~~ furnish these records to the department upon request. Treated alfalfa seed must not be used or distributed for human food (sprouting).

(4) All alfalfa seed treated with ~~Pirimor 50-DF~~ or any of the ~~FIFRA Section~~ section 24(c) of FIFRA pesticides registered for use in alfalfa seed production only ~~shall~~ must be tagged at processing plants and such tag ~~shall~~ must state NOT FOR HUMAN CONSUMPTION AND/OR ANIMAL FEED. It ~~shall be~~ is the grower's responsibility to notify the processing plants of any seed crops treated with ~~Pirimor 50-DF~~ or any of the ~~FIFRA Section~~ section 24(c) of FIFRA pesticides for use in alfalfa seed production only.

(5) All usage, in addition to the requirements of this rule, ~~shall must be in compliance~~ comply with the ~~Pirimor 50-DF label or the FIFRA Section~~ section 24(c) of FIFRA labels for the pesticides registered for use in alfalfa seed production only.

AUTH: 80-8-105, MCA
IMP: 80-8-105, MCA

REASON: Pirimor 50-DF was last registered with the Environmental Protection Agency (EPA) in 2009 and became inactive on April 21, 2010. The department does not regulate section 3 products unless they are federally required to through EPA. In addition to removing this product, proposed amendments update terminology and language to comply with Secretary of State Administrative Rules of Montana formatting guidelines.

4.10.807 BURNING OR INCINERATION OF PESTICIDE ~~(1) Incineration or burning pesticide containers or the use of an unapproved incinerator to burn or incinerate pesticide containers is prohibited except when such burning or incineration is approved by the Montana department of health and environmental sciences.~~

(1) The Department of Environmental Quality (DEQ) must approve pesticide container burning or incineration.

AUTH: 80-8-105, MCA
IMP: 80-8-105, MCA

REASON: Proposed amendments update a state agency name. The Department of Health and Environmental Sciences is now the Department of Environmental Quality.

4.10.1009 NONCOMPLIANCE WITH PESTICIDE WORKER PROTECTION STANDARDS AND LABELING ~~(1) For purposes of administering civil penalties for noncompliance with worker protection standards, the department hereby adopts the worker protection statements and worker protection standard as set forth in the Code of Federal Regulations, Title 40, part 156, subpart K and Title 40, part 170, revised as of July 1, 1998. A copy can be obtained from the Montana Department of Agriculture, Agricultural Sciences Division, PO Box 200201, Helena, MT 59620-0201, (406-444-2944).~~

(1) Failure to comply with the worker protection standard and associated labeling requirements violates the Montana Pesticides Act and is subject to civil penalties pursuant to 80-8-306, MCA.

~~(2) Failure to comply with the worker protection standard and associated labeling requirements is a violation of the Montana Pesticides Act and is subject to civil penalties pursuant to 80-8-306, MCA.~~

(2) Persons using pesticides referencing the worker protection standard, labeled 40 CFR, part 156, subpart K, must comply with worker protection statements and the worker protection standard. Failure to comply constitutes use of a pesticide in a manner inconsistent with the label.

~~(a) when the worker protection standard is referenced on a pesticide label pursuant to 40 CFR, Part 156, subpart K, persons using the pesticide must comply~~

~~with the worker protection statements and the worker protection standard. Failure to comply constitutes use of a pesticide in a manner inconsistent with the label.~~

~~(b)(3) any pesticide that is Pesticides~~ labeled for use in the production of agricultural plants on an agricultural establishments, as defined in 40 CFR 170.3, ~~shall~~ must be labeled with worker protection statements set forth in 40 CFR, Part 156, subpart K. A pesticide not so labeled is misbranded. It is a violation ~~for any person~~ to distribute, sell, or offer for sale or deliver for transportation or transport in intrastate commerce any ~~pesticide that is~~ misbranded pesticide, and ~~such violation is~~ subject to a civil penalty pursuant to 80-8-306, MCA.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

REASON: The department formerly adopted 40 CFR, part 170 by reference in ARM 4.10.1009(1). Proposed amendments modernize language associated with 40 CFR, Part 170. The department no longer maintains copies of the CFR for distribution to the public. Interested parties may obtain access to the CFR directly through the EPA or access it online.

4.10.1803 STANDARDS FOR DISPOSAL PROGRAM OPERATION WASTE PESTICIDE DISPOSAL PROGRAM ~~(1) The disposal program may accept:~~

~~(a) acceptable pesticides;~~

~~(b) recyclable pesticide containers;~~

~~(c) exchangeable pesticides.~~

~~(2) The disposal program shall not accept:~~

~~(a) nonpesticide materials;~~

~~(b) unacceptable pesticides.~~

~~(3) Contractors conducting the disposal program must meet qualifications that include but are not limited to the following items:~~

~~(1) Disposal program contractors must:~~

~~(a) registered as a hazardous waste generator with the Montana Department of Environmental Quality (DEQ) and possess a hazardous waste identification number issued by the United States environmental protection agency. (EPA) DEQ. DEQ registration and an EPA a hazardous waste identification number shall not be are not~~ required for a contractor involved solely with recyclable pesticide containers and exchangeable pesticides;

~~(b) possess or subcontract only with transporters that possess all necessary federal and state permits, licenses and registrations required for the transportation of hazardous waste; and~~

~~(c) certify that employees conducting the disposal program meet occupational safety and health administration safety and training requirements in the code of federal regulations (29 CFR 1910.120).~~

~~(4)(2) The department may issue request for bid proposals (RFPs) and enter into written contracts with contractors to conduct the operational aspects of the disposal program operations. The department may require that entities responding entities to the RFP provide specific information on methods and procedures that the~~

contractors will use in conducting a disposal program. ~~This information provided by the contractor~~ Contractor information may include but is not limited to:

(a) a collection site preparation and restoration plan to provide for safe transfer of acceptable pesticides, exchangeable pesticides, and recyclable pesticide containers including provisions for site selection, protection of the environment and public health, and restoration of the site to its original condition;

(b) evidence of an established quality assurance/quality control program used by the contractor;

(c) provisions for the development of a site-specific health and safety plan(s) for the chosen collection site(s);

(d) written documentation provided to the department before collection ensuring that the acceptable pesticides collected under the disposal program will be accepted by an EPA-permitted disposal facility for incineration;

(e) methods for management of collected acceptable pesticides from the collection site to the disposal facility in compliance with ARM Title 17, chapter 54, ~~Administrative Rules of Montana~~;

(f) provisions for the inspection and monitoring of the disposal program by the department;

(g) attendance at organizational meeting(s) prior to collection day(s); and

(h) provisions for written documentation of collection activities provided to the department within established time schedules, ~~which may include:~~

~~(i) an itemized list of pesticide products by trade/generic name and amounts collected;~~

~~(ii) shipping manifests.~~

~~(5)(3)~~ The department ~~shall~~ establishes criteria for awarding the disposal program contract(s). Selection criteria ~~shall~~ includes but is not ~~be~~ limited to:

(a) ability to perform service;

(b) related experience or similar waste disposal projects;

(c) references;

(d) federal Resource Conservation and Recovery Act (RCRA) ~~compliance~~ record;

(e) clarity and completeness of bid proposal; and

(f) cost.

AUTH: 80-8-105, MCA

IMP: 80-8-111, 80-8-112, MCA

REASON: The reference to the Environmental Protection Agency (EPA) is stricken in (1) because the agency no longer maintains a database for hazardous waste identification numbers. The Department of Environmental Quality (DEQ) currently administers this database. Other proposed amendments update language to comply with Administrative Rules of Montana standards.

4.10.1804 PESTICIDE DISPOSAL AND CONTAINER RECYCLING PROGRAM OPERATION (1) The department or its designated agent may conduct outreach and educational activities to inform the public about the functions of the disposal program ~~and may conduct these.~~ Outreach activities may be conducted in

cooperation with the Montana State University Extension Service, local governments, the contractor(s) and others.

(2) The department may target ~~the operational activities of the~~ disposal program activities to regions or areas within the state during each fiscal year.

(3) ~~Collection site(s) shall be selected by the contractor. The department~~ selects waste pesticide collection site(s) in consultation with the contractor.

(4) The department ~~will~~ establishes minimum criteria for ~~a site to qualify as a~~ collection site(s).

(5) The department establishes ~~the following~~ procedures for disposal of acceptable pesticides, including:

(a) Persons intending to participate in the disposal program for disposal of waste pesticides or non-plastic recyclable pesticide containers such as containers made of materials like metal, fiberboard, or other similar material must ~~make~~ application apply to the department ~~or the department designee~~ on forms provided by the department. Information provided on the form must include, but is not limited to:

(i) brand name of the pesticide if present on label or if known;
(ii) active ingredient of the pesticide if present on label or if known;
(iii) EPA registration number or ~~the~~ United States Department of Agriculture (USDA) registration number, if present on label or if known;

~~(iv) quantity of each pesticide;~~

~~(v)(iv)~~ container size, composition, condition, and quantity to be disposed;

~~(vi)(v)~~ applicant's name, address and telephone number; and

~~(vii)(vi)~~ other information deemed necessary by the department.

(b) ~~Persons who submit applications to the program must receive written~~ Written approval from the department or the department designee is required to participate in the program.

(c) ~~Prior to the collection day, the~~ The department shall ~~provides~~ provide the participants with a form listing the acceptable pesticides approved for disposal. This form ~~will serve as~~ serves as a bill of lading and must be in the possession of the participant during transport of the acceptable pesticides to the collection site. This form ~~will also serve~~ to transfer ownership of the pesticide(s) from the participant to the contractor by a pesticide product release statement on the form.

(d) Participants in the disposal program must transport acceptable pesticide products to the collection site according to the Montana Pesticides Act and United States Department of Transportation regulations.

(e) A participant may assign a designee to transport the participant's acceptable pesticides to the collection site only if ~~the designee is~~ approved by the department during preregistration.

(f) Ownership of acceptable pesticides approved for disposal ~~will be transferred~~ transfers from the participant to the contractor at the collection site.

(6) The department ~~establishes the following procedures for recycling of pesticide containers.~~ approves establishment of pesticide container recycling collection sites, public or private, meeting minimum requirements. Individuals or entities interested in establishing a collection site must contact the department to discuss requirements and considerations.

~~(a) Persons intending to participate in the disposal program for the purpose of recycling pesticide containers must make application to the department on forms provided by the department. Information provided on the form must include but may not be limited to:~~

- ~~(i) brand name of the pesticide if present on label or known;~~
- ~~(ii) active ingredient of the pesticide if present on label or known;~~
- ~~(iii) EPA registration number or United States department of agriculture registration number, if present;~~
- ~~(iv) number and size of each pesticide container;~~
- ~~(v) container composition;~~
- ~~(vi) applicant's name, address and telephone number.~~

~~(b) Recyclable pesticide containers must be rinsed according to label directions as addressed in the code of federal regulations (40 CFR 156.10).~~

~~(c) The contractor shall inspect each container. The contractor must not accept any container that in the judgement of the contractor has any visible residue.~~

~~(d) A form completed by the department following review of the participant's application will list containers approved for recycling under the disposal program. A copy of this form will be returned to the participant and must be in the participant's possession during transport of the containers to the collection site and must be provided to the contractor at the collection site.~~

(a) The department establishes guidelines for individuals to participate in the pesticide container recycling program.

(7) The department establishes the following procedures for the exchange of exchangeable pesticides:

(a) a pesticide may be exchanged or transferred from one person to another for the purpose of using the pesticide according to label directions. The pesticide offered for exchange must be:

- (i) registered or meet provisions of 80-8-201(9)(a) or (b), MCA; and
- (ii) in the original, labeled, unopened sealed container.

(8) The department allows pesticide exchange(s) under these conditions:

~~(b)(a)~~ owners of exchangeable pesticides must apply to the department or department designee and provide information on a department form, according to ARM 4.10.1804(5)(a);

~~(c)(b)~~ Persons interested in obtaining persons wanting to receive exchangeable pesticides must provide their name, address, telephone number, and desired pesticides wanted to the department. Persons wanting interested in obtaining pesticides classified as restricted use must be licensed to use restricted use pesticides by the department;

~~(d)(c)~~ the department or department designee will matches donors to users;

~~(e)(d)~~ transfer of ownership of exchangeable pesticides may occur during scheduled pesticide disposal collections or through other arrangements approved by the department; and

~~(f)(e)~~ the department may require a label claim analysis for the pesticide offered for exchange to be analyzed for label claim.

AUTH: 80-8-105, MCA

IMP: 80-8-111, 80-8-112, MCA

REASON: Amendments proposed by the department in (8) provide clarity for exchangeable pesticides. Other updates to processes and procedures include changes that comply with Administrative Rules of Montana formatting standards.

4.10.1806 FEES (1) through (3) remain the same.

(4) ~~The department may charge Participants~~ participants who receive an exchangeable pesticide under ARM 4.10.1804(7) shall pay a fee of \$5 for each container with a net content of less than or equal to one gallon or ten pounds and \$10 for each container with a net content of greater than one gallon or ten pounds. ~~Fees The department, at its discretion, may waive fees for charged to participants who receive exchangeable pesticides can be lowered at the discretion of the department if the established fee is higher than the retail value of the exchangeable pesticide.~~

~~(5) Applicators licensed by the department shall be given a monetary credit if they are a participant in the disposal program. The credit must be used during the certification period for farm applicators or the licensing period for dealers, commercial applicators, commercial operators, and government applicators in which the fee is paid;~~

~~(a) farm applicators shall receive a one time credit of \$15 during the farm applicator's certification period.~~

~~(b) commercial applicators shall receive an annual credit of \$10 for each licensing period that the applicator is licensed. Commercial applicators shall receive an annual credit of \$15 for the first two commercial operators operating under their license for each licensing period the operator is licensed. A credit of \$5 shall be received for each additional commercial operator operating under the applicator's license for each licensing period the operator is licensed;~~

~~(c) government agencies shall receive an annual credit of \$10 for each licensing period that each applicator is licensed for the first four licensed applicators. A credit of \$10 shall be received for each additional applicator for each licensing period that the applicator is licensed. The total credit must not exceed \$280; and~~

~~(d) dealers shall receive an annual credit of \$10 for each licensing period that the dealer is licensed.~~

AUTH: 80-8-105, MCA

IMP: 80-8-111, 80-8-112, MCA

REASON: Proposed amendments include deleting (5) that was amended in House Bill 126 during the Regular Session of the Montana Legislature in 2017. Doing so provides consistency with 80-8-111, MCA.

ECONOMIC IMPACT: Fiscal impact associated with deleting (5) is minimal. Fewer than twenty participants receive monetary credit for participation in the disposal program per year. The department estimates this will result in less than \$1,000 annually.

4. The department proposes to repeal the following rule:

4.10.702 REGISTRATION REQUIREMENTS

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: Portions of ARM 4.10.702 were applied to ARM 4.10.701. In effect, two rules were combined into one which makes this rule no longer necessary.

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: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3156; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., August 5, 2019.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on June 24, 2019.

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

/s/ Cort Jensen

Cort Jensen
Rule Reviewer

/s/ Ben Thomas

Ben Thomas
Director
Agriculture

Certified to the Secretary of State June 25, 2019.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
8.100.101 through 8.100.112)	
pertaining to the Montana Board of)	
Research and Commercialization	)	NO PUBLIC HEARING
Technology	)	CONTEMPLATED

TO: All Concerned Persons

1. On August 13, 2019, the Department of Commerce proposes to repeal the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., July 17, 2019, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; TDD (406) 841-2731; facsimile (406) 841-2771; or e-mail to docadministrativerules@mt.gov.

3. The department proposes to repeal the following rules:

8.100.101 ORGANIZATION RULE

AUTH: 90-3-1003, MCA
IMP: 2-15-1819, 90-3-1003, MCA

8.100.102 PROCEDURAL RULES

AUTH: 90-3-1003, MCA
IMP: 90-3-1003, MCA

8.100.103 PUBLIC PARTICIPATION RULES

AUTH: 90-3-1003, MCA
IMP: 90-3-1003, MCA

8.100.104 DEFINITIONS

AUTH: 90-3-1003, MCA
IMP: 90-3-1003, MCA

8.100.105 APPLICATION PROCEDURES FOR A RESEARCH AND
COMMERCIALIZATION GRANT OR LOAN – SUBMISSION AND EVALUATION OF
EXECUTIVE SUMMARY AND PROJECT PROPOSAL

AUTH: 90-3-1003, MCA
IMP: 90-3-1003, MCA

8.100.106 APPLICATION PROCEDURES FOR A RESEARCH AND
COMMERCIALIZATION GRANT OR LOAN – EVALUATION AND REVIEW
PROCESS

AUTH: 90-3-1003, MCA
IMP: 90-3-1003, MCA

8.100.107 APPLICATION PROCEDURES FOR A RESEARCH AND
COMMERCIALIZATION GRANT OR LOAN – BOARD ACTION

AUTH: 90-3-1003, MCA
IMP: 90-3-1003, MCA

8.100.108 APPLICATION PROCEDURES FOR A RESEARCH AND
COMMERCIALIZATION GRANT OR LOAN – FUNDING AGREEMENT

AUTH: 90-3-1003, MCA
IMP: 90-3-1003, MCA

8.100.109 RECONSIDERATION OF FUNDING DECISION – ALL
RESEARCH AND COMMERCIALIZATION PROPOSALS

AUTH: 90-3-1003, MCA
IMP: 90-3-1003, MCA

8.100.110 FAILURE TO PRODUCE IN MONTANA – ALL RESEARCH AND
COMMERCIALIZATION GRANTS AND LOANS

AUTH: 90-3-1003, MCA
IMP: 90-3-1003, MCA

8.100.111 RIGHTS TO INTELLECTUAL PROPERTY – ALL RESEARCH
AND COMMERCIALIZATION GRANTS AND LOANS

AUTH: 90-3-1003, MCA
IMP: 90-3-1003, MCA

8.100.112 CONFIDENTIALITY OF INFORMATION AND OPEN MEETINGS

AUTH: 90-3-1003, MCA
IMP: 90-3-1003, MCA

REASON: House Bill 52, sponsored by Representative Jim Keane and signed by Governor Steve Bullock in the 66th Regular Session of the Montana Legislature, Chapter 343, Laws 2019, repealed the Montana Board of Research and Commercialization Technology Program.

4. Concerned persons may submit their data, views, or arguments in written form or a request for opportunity to submit data, views, or arguments in oral form to: Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; TDD (406) 841-2731; facsimile (406) 841-2771; or e-mail to docadministrativerules@mt.gov, and must be received no later than 5:00 p.m., August 2, 2019.

5. 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 Bonnie Martello at the above address no later than 5:00 p.m., August 2, 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 57 persons based on 576 potential contacts of the Montana Board of Research and Commercialization Technology.

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 may 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 Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to docadministrativerules@mt.gov, or 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 repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Garrett R. Norcott
Garrett R. Norcott
Rule Reviewer

/s/ Tara Rice
Tara Rice
Director
Department of Commerce

Certified to the Secretary of State June 25, 2019.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I pertaining to two-way) PROPOSED ADOPTION
electronic communication while)
hunting)

TO: All Concerned Persons

1. On July 30, 2019, at 6:00 p.m., the Fish and Wildlife Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Headquarters Building, 1420 East 6th Street, Helena Montana, to consider the proposed adoption of the above-stated rule.

2. The 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, contact the commission no later than 5:00 p.m. on July 19, 2019, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

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

NEW RULE I TWO-WAY ELECTRONIC COMMUNICATION WHILE HUNTING (1) Two-way electronic communication includes, but is not limited to, the following:

- (a) radios (walkie-talkies/CB);
 - (b) cell phones;
 - (c) text messages; and
 - (d) the use of social media or other electronic platforms, applications, or programs.
- (2) The use of two-way electronic communication is prohibited:
- (a) while in the act of hunting game animals or wolves to aid in the taking or locating of live animals;
 - (b) while in the act of hunting mountain lions or bobcats with dogs, beginning when the dogs are placed or physically released on tracks or a scent trail;
 - (c) to avoid game check stations or FWP enforcement personnel; and
 - (d) to facilitate unlawful hunting activity.
- (3) The use of two-way electronic communication for the use of safety or other legitimate purposes is exempt.

AUTH: 87-1-301, MCA
IMP: 87-1-502, 87-1-506, MCA

REASON: In order to promote ethical hunting and fair chase, the commission has previously adopted prohibitions on the use of two-way electronic communication while hunting in their annual hunting regulations. The Hunting and Trapping Regulation Review Committee identified two-way communication as an item in the regulations that needed further clarification; therefore the commission is proposing to add clarifying language from what has previously been adopted in the hunting regulations to make it clear to both the public and department enforcement on when exactly the use of two-way communication is prohibited. The prohibition on two-way electronic communication is not something that is likely to change on a frequent basis and therefore does not need to be reconsidered and re-adopted every year in the hunting regulations, but rather, would be more appropriately adopted in administrative rule. The proposed language also clarifies when and how this rule applies to hunters.

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: Ron Howell, Department of Fish, Wildlife and Parks, 1 Airport Road, Glasgow, Montana, 59230; or e-mail rhowell@mt.gov, and must be received no later than August 2, 2019.

5. Kaedy Gangstad or another person appointed by the department has been designated to preside over and conduct the hearing.

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

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

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

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

/s/ Shane Colton
Shane Colton
Chair
Fish and Wildlife Commission

Certified to the Secretary of State June 25, 2019.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
12.6.301 pertaining to tagging)	
carcasses of game animals	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On September 6, 2019, the Fish and Wildlife Commission (commission) proposes to repeal the above-stated rule.

2. The 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, contact the commission no later than 5:00 p.m. on July 19, 2019, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

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

12.6.301 TAGGING OF CARCASSES OF GAME ANIMALS

AUTH: 87-1-201, MCA
IMP: 87-2-509, MCA

REASON: The commission is proposing to repeal the rule as the penalty language of the rule is outdated and unnecessary. In addition, the requirement that tags on animals must be visible is not entirely clear as tags are often not immediately visible due to the tape used to affix the tags and the position of the animal. Further, the rule will not be applicable when the use of electronic tagging begins.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Ron Howell, Department of Fish, Wildlife and Parks, 1 Airport Road, Glasgow, Montana, 59230; or e-mail rhowell@mt.gov, and must be received no later than August 2, 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 Ron Howell at the above address no later than 5:00 p.m., August 2, 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 more than 25 persons based on the number of people who hunt in Montana.

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

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

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

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

/s/ Shane Colton
Shane Colton
Chair
Fish and Wildlife Commission

Certified to the Secretary of State June 25, 2019.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I pertaining to animal kill site) PROPOSED ADOPTION
verification)

TO: All Concerned Persons

1. On July 31, 2019, at 6:00 p.m., the Fish and Wildlife Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Headquarters Building, 1420 East 6th Street, Helena Montana, to consider the proposed adoption of the above-stated rule.

2. The 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, contact the commission no later than 5:00 p.m. on July 19, 2019, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

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

NEW RULE I KILL SITE VERIFICATION (1) At the request of a department game warden, it is required to return to the kill site of any game animal, game bird, wolf, or furbearer that has been hunted or trapped.

AUTH: 87-1-301, MCA
IMP: 87-1-502, 87-1-506, MCA

REASON: As a condition of hunting and trapping in Montana, the commission has previously adopted kill site verification requirements in their annual hunting regulations to allow department enforcement the ability to visit the site to verify that an animal was legally harvested. The Hunting and Trapping Regulation Review Committee identified kill site verification as an item in the regulations that needed further clarification; therefore the commission is proposing to add clarifying language from what has previously been adopted in the hunting regulations to make it clear that this rule applies to animals that are hunted and/or trapped. Kill site verification is not something that is likely to change on a frequent basis and therefore does not need to be reconsidered and re-adopted every year in the hunting regulations, but rather, would be more appropriately adopted in administrative rule. The proposed language also clarifies when and how this rule applies to hunters and trappers.

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: Ron Howell, Department of Fish, Wildlife and Parks, 1 Airport Road,

Glasgow, Montana, 59230; or e-mail rhowell@mt.gov, and must be received no later than August 2, 2019.

5. Kaedy Gangstad or another person appointed by the department has been designated to preside over and conduct the hearing.

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

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

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

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

/s/ Shane Colton
Shane Colton
Chair
Fish and Wildlife Commission

Certified to the Secretary of State June 25, 2019.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 12.11.501 pertaining to the list) AMENDMENT
of water bodies with specific)
regulations found in administrative) NO PUBLIC HEARING
rule) CONTEMPLATED

TO: All Concerned Persons

1. On August 23, 2019, the Fish and Wildlife Commission (commission) proposes to amend the above-stated rule.

2. The 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, contact the department no later than March 8, 2019, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

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

12.11.501 LIST OF WATER BODIES

(1) Alvord Lake ARM 12.11.3402
(1) through (10) remain the same but are renumbered (2) through (11).
(~~11~~12) Bitterroot River ARM 12.11.610₁,
12.11.6301,
12.11.6302, &
12.11.6306
(12) through (19) remain the same but are renumbered (13) through (20).
(21) Brush Lake ARM 12.11.5303
(20) remains the same but is renumbered (22).
(~~24~~23) Canyon Ferry Reservoir ARM 12.11.1001₁,
12.11.1002, &
12.11.3201
(22) through (38) remain the same but are renumbered (24) through (40).
(41) Flathead River ARM 12.11.2606
(39) through (52) remain the same but are renumbered (42) through (55).
(~~53~~56) Helena Valley Equalizing Regulating
Reservoir Regulations ARM 12.11.3210
(54) through (62) remain the same but are renumbered (57) through (65).
(~~66~~) Kilbrennan Lake ARM 12.11.3423
(63) through (116) remain the same but are renumbered (67) through (120).

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-303, MCA

REASON: The commission maintains ARM 12.11.501 as a cross-reference to assist with locating rules pertaining to specific water bodies. The commission adopted new rules pertaining to the recreational use on the Flathead River, Alvord Lake, Kilbrennan Lake, and Brush Lake on May 26, 2011; new rules pertaining to the recreational use on Canyon Ferry on May 10, 2019; and new rules pertaining to commercial use on the Bitterroot River on May 24, 2019. ARM 12.11.501 was not updated and the commission is now proposing amendments to ARM 12.11.501 in order to incorporate the new rules.

4. Concerned persons may submit their data, views, or arguments either orally or in writing to: Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, Helena, MT, 59620-0701; or e-mail jesssnyder@mt.gov, and must be received no later than August 2, 2019.

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

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

7. 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/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer
Department of Fish, Wildlife and Parks

/s/ Shane Colton
Shane Colton
Chair
Fish and Wildlife Commission

Certified to the Secretary of State June 25, 2019.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 18.15.411 and 18.15.419	)	AMENDMENT
pertaining to Motor Fuels Tax)	
Electronic Refunds	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On August 5, 2019, the Department of Transportation proposes to amend the above-stated rules.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on July 26, 2019, to advise us of the nature of the accommodation that you need. Please contact Marie Stark, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-7274; fax (406) 444-5411; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail mestark@mt.gov.

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

18.15.411 PROCESSING CLAIMS FOR REFUNDS (1) If any claim or any part of a claim is rejected, the department may, after investigation, require the claimant to file an amended statement or provide supporting documentation before action is taken under the following terms:

(a) Supporting documentation must be provided within 30 days after the request, or the refund request will be denied, and the claimant must re-submit the claim within the time allotted in 15-70-432 MCA; and

(b) If a refund has already been paid and no supporting documentation is submitted upon request, the department will send an invoice to the claimant for repayment.

(2) If the taxpayer submits an amended claim, the claim is reasonable, and the taxpayer has furnished substantial proof, the department in its discretion may accept the amended claim.

~~(2)~~ (3) A taxpayer may, ~~of their~~ on the taxpayer's own initiative, file an amended claim. If the claim is reasonable and the taxpayer has furnished substantial proof, the department, in its discretion, may accept the claim.

AUTH: 15-70-104, MCA
IMP: 15-70-432, 15-70-434, MCA

REASON: The proposed amendment to (1) is necessary to allow the department to establish a reasonable timeframe to release the liability of the refund. The proposed amendment will establish a 30-day time for submission of supporting documents as requested by the department. The proposed amendment to (3) will make non-substantive style changes only to clarify the wording.

18.15.419 STATEMENT FOR KEYLOCK CARDTROL REPORTING

(1) Any seller who sells gasoline or special fuel to a purchaser through a keylock or cardtrol on which a refund may be claimed in accordance with 15-70-430, MCA, shall provide the purchaser with a statement of fuel purchased. The statement may be prepared as frequently as deemed necessary, but one statement must be issued at least every 30 days. ~~To support the accuracy of the statement, the seller shall list or attach a list supporting all information used in the statement.~~

AUTH: 15-70-104, MCA
IMP: 15-70-430, MCA

REASON: The proposed amendment is necessary because keylock systems do not all have the ability to provide the list as required in this rule. The proposed amendment will therefore delete the list attachment as a requirement.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Marie Stark, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-7274; fax (406) 444-5411; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail mestark@mt.gov, and must be received no later than 5:00 p.m., August 2, 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 Marie Stark at the above address no later than 5:00 p.m., August 2, 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 300 persons based on the current 3000 agricultural applicants in Montana.

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

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available on the Department of Transportation website at www.mdt.mt.gov.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined the proposed amendments will not significantly and directly impact small businesses.

11. With regard to the requirements of 2-15-142, MCA, the department has determined that the amendment of the above-referenced rules will not have direct tribal implications.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State June 25, 2019.

BEFORE THE BOARD OF AERONAUTICS AND
THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 18.13.404 and 18.13.406 and	)	AMENDMENT AND
the repeal of ARM 18.13.501,	)	REPEAL
18.13.502, 18.13.503, 18.13.504, and)	
18.13.505 pertaining to Board of	)	NO PUBLIC HEARING
Aeronautics Loan and Grant Program	)	CONTEMPLATED
and Pavement Preservation Grants)	

TO: All Concerned Persons

1. On August 5, 2019, the Board of Aeronautics and the Department of Transportation propose to amend and repeal the above-stated rules.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on July 26, 2019, to advise us of the nature of the accommodation that you need. Please contact Tim Conway, Department of Transportation, Aeronautics Division, P.O. Box 200507, Helena, Montana, 59620-0507; telephone (406) 444-9547; fax (406) 444-2519; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail tconway@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY The 2019 Legislature enacted Chapter 455, Laws of 2019 (House Bill 661), an act generally revising aeronautics funding laws. Among other changes, the bill allows a grant for the entire local match for a federally funded project and repeals 67-1-301(5), MCA, which previously provided for a percentage of aviation fuel tax collected from scheduled passenger air carriers to be deposited in a separate account to be used only for pavement preservation grants to airports served by those carriers. The bill is effective July 1, 2019.

The department and the board are amending ARM 18.13.404 and 18.13.406 and repealing ARM 18.13.501 through 18.13.505 to conform to the new legislative changes and implement the bill revising aeronautics funding laws. Where additional specific bases for a proposed action exist, the department and the board will identify those reasons immediately following that rule.

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

18.13.404 GENERAL TERMS AND CONDITIONS (1) through (3) remain the same.

(4) Grants may be awarded for up to 50% and including 100% of an applicant's share of total project cost ~~when that same project is also receiving any~~ regardless of assistance from federal sources.

~~(5) Grants may be awarded for up to 100% of an applicant's total project cost when that same project is not receiving any assistance from federal sources.~~

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

AUTH: 67-2-102, MCA

IMP: 67-1-301, 67-1-304, 67-1-306, 67-1-307, [Chapter 455, Section 2, L. 2019], MCA

REASON: The proposed amendment is necessary to implement Chapter 455, L. 2019, Section 2 which states the board must allow a grant for an amount up to 100%, or the entire local match required for a project funded with federal funds.

18.13.406 EVALUATION, REVIEW, AND SELECTION (1) and (2) remain the same.

~~(3) Priorities shall be given to applications as follows:~~

~~(a) Projects which are specifically related to airports and airport development will be given highest priority when evaluating applications for aeronautically related projects.~~

~~(b) Projects located at primary commercial service airports will be given lower priority than other eligible airport projects when evaluating applications for aeronautically related projects due to primary commercial service airports' higher priority in receiving aeronautics pavement preservation monies granted under a separate administrative grant program outlined in ARM 18.13.503.~~

(4) remains the same.

AUTH: 67-2-102, MCA

IMP: 67-1-301, 67-1-304, 67-1-306, 67-1-307, [Chapter 455, Section 2, L. 2019], MCA

REASON: The proposed amendment is necessary to repeal the lower priority evaluations previously given by the board to primary commercial service airport loan or grant applications. The lower priority was based on the primary commercial service airports' ability to receive pavement preservation monies under a separate administrative grant program, which program has now been repealed by the 2019 Legislature through Ch. 455, L. 2019.

5. The department and the board propose to repeal the following rules:

18.13.501 POLICY AND PURPOSE OF PAVEMENT PRESERVATION GRANTS

AUTH: 67-2-102, MCA

IMP: 67-1-301, 67-1-304, MCA

18.13.502 ELIGIBILITY FOR PAVEMENT PRESERVATION GRANTS

AUTH: 67-2-102, MCA
IMP: 67-1-301, 67-1-304, MCA

18.13.503 AWARD OF PAVEMENT PRESERVATION GRANTS

AUTH: 67-2-102, MCA
IMP: 67-1-301, 67-1-304, MCA

18.13.504 TERMS AND CONDITIONS OF PAVEMENT PRESERVATION
GRANT RECIPIENTS

AUTH: 67-2-102, MCA
IMP: 67-1-301, 67-1-304, MCA

18.13.505 RECONSIDERATION OF BOARD DECISIONS ON PAVEMENT
PRESERVATION GRANTS

AUTH: 67-2-102, MCA
IMP: 67-1-301, 67-1-304, MCA

REASON: The proposed repeals are necessary because the 2019 Legislature in Ch. 455, L. 2019 repealed the pavement preservation grant program in its entirety.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Tim Conway, Department of Transportation, Aeronautics Division, P.O. Box 200507, Helena, Montana, 59620-0507; telephone (406) 444-9547; fax (406) 444-2519; or e-mail tconway@mt.gov, and must be received no later than 5:00 p.m., August 2, 2019.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Tim Conway at the above address no later than 5:00 p.m., August 2, 2019.

8. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 12 persons based on the approximately 115 eligible airport applicants.

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

10. An electronic copy of this proposal notice is available on the Department of Transportation website at www.mdt.mt.gov.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by U.S. mail on May 22, 2019.

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

13. With regard to the requirements of 2-15-142, MCA, the department and the board have determined that the amendment and repeal of the above-referenced rules will not have direct tribal implications.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

/s/ Tricia McKenna
Tricia McKenna
Chair
Board of Aeronautics

Certified to the Secretary of State June 25, 2019.

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

In the matter of the amendment of	)	AMENDED NOTICE OF PUBLIC
ARM 24.21.202, 24.21.302, and	)	HEARING AND EXTENSION OF
24.21.421 pertaining to registered	)	COMMENT PERIOD ON
apprenticeship	)	PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 24, 2019, the Department of Labor and Industry published MAR Notice No. 24-21-346 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 579 of the 2019 Montana Administrative Register, Issue Number 10.

2. A public hearing will be held on July 26, 2019, at 9:00 a.m., in Room 314 (third floor conference room) of the Walt Sullivan Building, Department of Labor and Industry, 1315 E. Lockey Avenue, Helena, Montana. The comment period will be extended until 5:00 p.m., August 2, 2019.

3. The rules proposed to be amended remain as proposed in the original notice.

4. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Labor and Industry no later than 5:00 p.m., July 19, 2019, to advise us of the nature of the accommodation that you need. Please contact Jay Reardon, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624-1728; telephone (406) 444-3556; TDD/Montana Relay Service *711; or e-mail james.reardon@mt.gov.

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: Jay Reardon, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, or e-mail james.reardon@mt.gov, and must be received no later than 5:00 p.m., August 2, 2019.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State June 25, 2019.

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

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING ON
24.174.401 fee schedule, 24.174.507	)	PROPOSED AMENDMENT AND
military training or experience,	)	REPEAL
24.174.524 collaborative practice)	
agreement requirements, 24.174.602)	
internship requirements, 24.174.604)	
preceptor requirements, 24.174.612)	
required forms and reports, 24.174.701)	
registration requirements, 24.174.703)	
use of pharmacy technician, 24.174.711)	
ratio of pharmacy technicians to)	
supervising pharmacists, 24.174.835)	
transfer of prescriptions, 24.174.2104)	
registered pharmacist continuing)	
education—requirements, and the repeal)	
of 24.174.702 qualifications of)	
pharmacy technician, 24.174.2101)	
pharmacies—annual renewal,)	
24.174.2102 pharmacy technician—)	
renewal, 24.174.2103 renewals,)	
24.174.2107 registered pharmacist)	
continuing education—noncompliance)	

TO: All Concerned Persons

1. On July 26, 2019, at 10:00 a.m., a public hearing will be held in the Basement Conference Room #B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Pharmacy no later than 5:00 p.m., on July 19, 2019, to advise us of the nature of the accommodation that you need. Please contact Marcie Bough, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdpba@mt.gov (board's e-mail).

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

24.174.401 FEE SCHEDULE (1) through (13) remain the same.

- (14) Pharmacy technician and technician-in-training registration fee 35
(15) through (23) remain the same.

AUTH: 37-1-134, 37-7-201, 50-32-314, MCA

IMP: 37-1-134, 37-1-305, 37-7-201, 37-7-302, 37-7-306, 37-7-321, 37-7-604, 37-7-605, 37-7-703, 50-32-314, MCA

REASON: The technicians-in-training (TTR) license type has been in place since 2002. However, when reviewing a TTR extension request, legal staff concluded that statute does not authorize the board to issue TTR licenses. Therefore, the board determined it is reasonably necessary to remove the TTR license type and corresponding references related to pharmacy technicians from this rule, ARM 24.174.701, and 24.174.703.

In lieu of the TTR license, the board is further amending ARM 24.174.701 and 24.174.703 to issue temporary certified pharmacy technician licenses valid for 12 months per 37-1-305, MCA. The only outstanding application requirement for these temporary licenses is completion of a certification exam administered and issued by one of the pharmacy technician certification authorities listed in rule. If the board receives proof of certification from the applicant within the 12-month timeline, a full pharmacy technician license will be issued that is subject to annual license renewal requirements. Importantly, license renewal requirements will continue to remain separate from the requirements for maintaining certification as determined by certifying entities. Because the same pharmacy technician applicants will pay the same fee but simply receive a different temporary license, there is no fiscal impact to board revenue. The board is amending the implementation citations to include 37-1-305, MCA.

To correlate with the TTR changes, the board is also repealing ARM 24.174.702 but incorporating the technician scope of practice language into relevant rules and removing the TTR reference in the listing of application fees.

24.174.507 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 of the Board of Pharmacy. ~~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: The board determined it is necessary to amend the rule to reflect feedback received since adopting this rule. The board has become aware that certain military personnel (reservists and national guardsmen who have never been activated) in fact do not receive a DD 214 form upon discharge from the military.

Because the current rule may be interpreted to require a DD 214 from all applicants who submit evidence of relevant military training, service, or education as part of the licensure process, the board is amending the rule to allow consideration of other evidence of military discharge in addition to or in lieu of a DD 214 form.

24.174.524 COLLABORATIVE PRACTICE AGREEMENT REQUIREMENTS

~~(1) Prior to initially engaging in collaborative practice, a pharmacist must provide the board with an executed written and electronic copy of the collaborative practice agreement.~~

(1) A pharmacist engaged in collaborative practice must:

(a) maintain an executed written copy of the collaborative practice agreement at the pharmacy and any other location in which the practice is occurring; and

(b) make the agreement available for inspection by the board.

~~(2) and (2)(a) remain the same.~~

~~(i) the practitioner as defined in 37-2-101, MCA, must be licensed in good standing in Montana; and~~

~~(ii) the practitioner must be in active practice in the community in which the collaborating pharmacist practices. A request for an exception to this provision must be in writing and will be decided by the board.~~

~~(b) through (4) remain the same.~~

AUTH: 37-7-201, MCA

IMP: 37-7-101, 37-7-201, MCA

REASON: The board is amending (1) to no longer require that pharmacists annually submit copies of their collaborative drug therapy management (CDTM) agreements to the board and simply require the agreements be available for inspection. The board's inspectors routinely request pharmacy records during inspections and requiring CDTM agreements at the time of inspection comports with current practice and reduces the board staff's administrative burden of maintaining the copies. It is important that pharmacies maintain records onsite, including CDTM agreements, and doing so enables the board's inspectors to determine compliance with all requirements at the time of inspection.

The board is amending (2) to remove the requirement for a practitioner to be in active practice in the community in which a collaborating pharmacist practices. The board determined this amendment is reasonably necessary because the provision does not reflect current practice, potentially limits the opportunity for collaboration, and prevents flexibility in how pharmacists and practitioners collaborate across a variety of practice settings and locations.

24.174.602 INTERNSHIP REQUIREMENTS (1) through (6) remain the same.

(7) The intern is responsible for properly submitting all forms and hour reports under the approved program directly to the school of pharmacy.

(8) remains the same.

(9) An intern shall be:

(a) and (b) remain the same.

(c) a graduate of a pharmacy program located outside the United States of America which is not accredited and who ~~has successfully passed equivalency examinations approved by the board~~ is licensed pursuant to ARM 24.174.605.

(10) and (11) remain the same.

(12) The intern shall notify the board of any change of permanent address, ~~employment, or preceptor~~ within 30 days.

(13) and (14) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The board is amending several provisions in this rule, ARM 24.174.604, and 24.174.612 regarding pharmacist interns, their educational opportunities with preceptors and supervising pharmacists, and the procedures for interns to obtain pharmacy school credit and complete the 1,500 hours to meet pharmacist licensure requirements.

In evaluating administrative efficiencies, board and licensing staff identified the reporting and tracking of intern hours to be an unnecessary burden on licensees, preceptors, and staff. Pharmacy schools collect and verify intern hours and use experiential program computer program technologies to improve such procedures and improve efficiency. For example, interns can now input hours directly into the school's system which is more efficient and can replace the forms and procedures currently required by the board for tracking and/or verifying intern hours. In addition, other states seeking to verify intern hours can receive confirmation directly from the school rather than the board, a practice already in place in other states. A pharmacy school also verifies successful completion of intern hours to issue a certificate of completion required in the application for pharmacist licensure. Therefore, the board is amending these rules to no longer require pharmacist interns to submit hours to the board as it is duplicative and unnecessary.

To improve educational opportunities, the board is removing limitations on the number of pharmacist interns that a preceptor and/or supervising pharmacist can precept at one time. By allowing for greater flexibility in accommodating educational experiences at different pharmacy practice locations, the amendment will ensure more opportunities for pharmacist interns and removes potential challenges with rotation and clerkship placements, a change requested by the school of pharmacy. The amendments also correlate with proposed amendments to ARM 24.174.711 to remove interns from counting against the pharmacist to pharmacy technician ratio and therefore expand the ratio.

24.174.604 PRECEPTOR REQUIREMENTS (1) and (2) remain the same.

~~(3) A supervising pharmacist may only supervise one student in introductory pharmacy practice experience (IPPE) at any time.~~

~~(4) A supervising pharmacist may supervise no more than three persons at one time (including technicians, interns, and students), unless an exception is specifically granted by the board.~~

~~(5) A pharmacist preceptor may supervise two students at a time if the students are completing an advanced pharmacy practice experience (APPE) through an approved school of pharmacy.~~

~~(6) (3) A supervising pharmacist or preceptor may precept more than one intern at a time.~~

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: See REASON for ARM 24.174.602.

24.174.612 INTERNSHIP REQUIRED FORMS AND REPORTS (1) ~~Forms Intern and internship documentation, hours, and forms shall be furnished by the board, the cost of which is included in the application for internship registration school of pharmacy and filed directly to the school of pharmacy.~~

~~(a) The "intern application" must be filed by the intern~~ An intern must be licensed by the board before computed time is credited.

~~(b) The "internship experience affidavit", provided by the board, must be filed by the intern at the end of the internship experience in a given site or after 500 hours, whichever comes first.~~

~~(c) The "evaluation of internship site" must be filed by the intern at the completion of internship or externship experience in a given site or after 500 hours, whichever comes first.~~

~~(d) The "clerkship experience affidavit", provided by the board, must be filed by the intern at the end of the academic year.~~

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: See REASON for ARM 24.174.602.

24.174.701 PHARMACY TECHNICIAN REGISTRATION REQUIREMENTS

~~(1) In order to~~ To be registered as a pharmacy technician in this state, the applicant shall:

~~(a) submit application on a form prescribed by the board;~~

~~(b) pay application fees as prescribed by the board; and~~

~~(c) submit a copy of proof of certification by PTCB or other board approved certifying entity.~~

(a) be at least 18 years old;

(b) be a high school graduate or have attained an equivalent degree;

(c) be of good moral character;

(d) submit application on a form prescribed by the board;

(e) pay application fees as prescribed by the board; and

(f) submit a copy of proof of certification by the Pharmacy Technician Certification Board (PTCB), National Healthcareer Association (ExCPT), or other board-approved certifying entity.

~~(2) In order to be registered as a technician-in-training in this state, the applicant shall:~~

~~(a) apply to the board for a permit on an application supplied by the board;~~
~~(b) pay the fee required;~~
~~(c) provide the name and address of the pharmacy in which the technician-in-training is employed. A change in place of employment will require submission of updated information within 30 working days of the change.~~

(2) An applicant for registration as a pharmacy technician in this state may apply for a temporary practice permit as authorized by 37-1-305, MCA, valid for one year from the date the permit was issued.

~~(3) The permit to practice as a technician-in-training shall be valid for a period of not longer than 18 months. A technician-in-training applicant who has not passed the Pharmacy Technician Certification Board (PTCB), ExCPT, or other board-approved certifying exam within the 18 months due to extenuating circumstances may file a written request to the board for an extension of his or her technician-in-training license. The board will then determine when the license will expire. A technician-in-training whose license has expired but who did not pass the requisite exam may not apply for a technician-in-training license a second time.~~

(3) No pharmacist or intern whose license has been denied, revoked, suspended, or restricted for disciplinary purposes shall be eligible to be registered as a pharmacy technician.

~~(4) Working as a technician-in-training with an expired license is cause for disciplinary action against the licensee.~~

AUTH: 37-1-131, 37-7-201, MCA

IMP: 37-1-305, 37-7-201, MCA

REASON: See REASON for ARM 24.174.401. Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.174.703 USE OF PHARMACY TECHNICIAN (1) remains the same.

(2) A pharmacy technician must work under the provisions of a technician utilization plan and the plan must be made available for inspection by the board.

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

(5) (6) All pharmacy technician licenses and technician-in-training permits must be conspicuously displayed at all times in the place of business.

AUTH: 37-7-201, MCA

IMP: 37-7-101, 37-7-201, 37-7-301, 37-7-307, MCA

REASON: See REASON for ARM 24.174.401.

24.174.711 RATIO OF PHARMACY TECHNICIANS AND INTERNS TO SUPERVISING PHARMACISTS (1) A registered pharmacist in good standing may supervise the services of no more than ~~three~~ four pharmacy technicians at any time. The ~~4:3~~ 1:4 pharmacist to pharmacy technician ratio may be revised by the board at

any time for good cause. A pharmacist intern does not count against the pharmacist to pharmacy technician ratio.

(2) Registered pharmacists in good standing in the state of Montana may supervise a maximum of ~~three~~ four registered pharmacy technicians, provided:

(a) through (c) remain the same.

(3) If a pharmacy desires more than ~~three~~ four technicians to work under the supervision, direction, and control of one pharmacist, the pharmacy shall obtain the prior written approval of the board. To apply for approval, the pharmacist-in-charge shall submit a pharmacy services plan to the board. The pharmacy services plan submitted shall demonstrate how the plan facilitates the provision of pharmaceutical care and shall include, but shall not be limited to the following:

(a) through (6) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-101, 37-7-201, 37-7-307, 37-7-308, 37-7-309, MCA

REASON: The board determined it is reasonably necessary to amend this rule to expand the pharmacist to pharmacy technician ratio from 1:3 to 1:4 to better reflect changing pharmacy practice and procedures and address the consistent number of ratio variance requests the board receives. The board considered options for making no ratio change, expanding the ratio to 4 through 6 (or more) pharmacy technicians per pharmacist, or removing the ratio and allowing pharmacy practice locations to determine their own staffing levels. The board also considered a comparison of ratios in other states. The board concluded that expanding the ratio to 1:4 addresses current requests by pharmacies for a ratio waiver or for an increase in the ratio, while also maintaining adequate pharmacist oversight and supervision of technician duties to ensure patient safety and compliance with technician utilization plans.

The board is also amending (1) to no longer count pharmacist interns against the pharmacist to pharmacy technician ratio and allow for additional educational/training opportunities for interns, and supervisory/mentorship opportunities for pharmacists. This amendment further correlates with proposed changes to ARM 24.174.604 removing limitations on the number of pharmacist interns a preceptor or supervising pharmacist can precept.

The board offers the following example of how combining the ratio and intern amendments may impact staffing: a pharmacist who currently uses one spot of the 1:3 ratio for a pharmacist intern will have an opportunity to utilize two additional pharmacy technicians, maintain compliance with the 1:4 ratio, and still serve as a preceptor or supervising pharmacist for one or more pharmacist interns. Furthermore, the board expects the amendments to decrease the number of ratio variance requests it receives.

24.174.835 TRANSFER OF PRESCRIPTIONS (1) The transfer of prescription information for the purpose of ~~refill~~ dispensing is permissible between pharmacies subject to DEA regulations and the following requirements:

(a) the transfer is communicated directly between two licensed pharmacists/interns; and

(b) a retrievable audit trail, including the date of transfer and initials or code of the transferring parties, is maintained for a period of two years.

~~(b) controlled substances may only be transferred from the original pharmacy to which it was presented; and~~

~~(c) for a period of not less than two years, a retrievable audit trail must be maintained that includes the date of transfer and initials or code of the transferring party.~~

~~(2) The manual transfer of original prescription information for a controlled (dangerous) substance listed in Schedules III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one-time basis only, by following the procedures listed in (1). In addition:~~

~~(a) the transferring pharmacist shall record on the reverse of the invalidated prescription the DEA registration number of the pharmacy to which it was transferred; and~~

~~(b) the pharmacist receiving the transferred prescription shall record the DEA registration number of the pharmacy from which the prescription information was transferred.~~

~~(3) The electronic transfer of prescription information for the purpose of refill dispensing is permissible between pharmacies subject to the following requirements:~~

~~(a) (2) the The transferring pharmacy shall:~~

~~(i) remains the same but is renumbered (a).~~

~~(ii) (b) enter the name, address, and DEA number if required of the receiving pharmacy into the database of the transferring pharmacy;~~

~~(iii) remains the same but is renumbered (c).~~

~~(A) through (C) remain the same but are renumbered (i) through (iii).~~

~~(D) (iv) the date of the most recent refill; and.~~

~~(iv) maintain a retrievable audit trail, including the date of transfer and initials or code of the transferring party, for a period of two years; and~~

~~(b) (3) the The receiving pharmacy shall maintain documentation including:~~

~~(i) through (iv) remain the same but are renumbered (a) through (d).~~

~~(v) (e) the name, address, and DEA number if required of the transferring pharmacy;~~

~~(vi) (f) all other prescription information required by state and federal laws and regulations; and~~

~~(vii) a retrievable audit trail, including the date of transfer and initials or code of the receiving party, for a period of two years; and~~

~~(viii) remains the same but is renumbered (g).~~

~~(4) The electronic transfer of original prescription information for a controlled (dangerous) substance listed in Schedules III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one-time basis only, by following the procedures listed in (1) and (3).~~

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

~~(b) Whenever a consumer objects to their prescription records being made accessible to other pharmacies through the use of electronic prescription files, it is the duty of the pharmacy to assure that the consumer's records are not shared with or made accessible to another pharmacy except as provided in (1), (2), and (4) this rule.~~

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

~~(7) Both the original and transferred prescription must be maintained for a period of at least two years from the date of last refill.~~

~~(8) Pharmacies utilizing automated data processing systems must satisfy all information requirements of the manual mode for all prescription transferral and be certain that their system can void the original prescription once it is transferred, yet maintain the information on file.~~

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align with current pharmacy practice and address questions from licensees and the public by clarifying prescription transfers. Removing the term "refill" better reflects current practice in which original, unfilled prescriptions may need to be transferred to a different pharmacy because of patient choice and/or when a prescription is sent to the wrong pharmacy. The board believes the amendments will improve patient access to medications incorrectly e-prescribed, faxed, and/or phoned to the wrong pharmacy. Additionally, the changes eliminate redundant and conflicting provisions relative to federal Drug Enforcement Administration (DEA) regulations for the transfer of controlled substance prescriptions. Lastly, the board is amending this rule to eliminate redundant record retention language and outdated references to automated data processing systems and clarify record keeping requirements for prescription transfers.

24.174.2104 REGISTERED PHARMACIST CONTINUING EDUCATION-REQUIREMENTS (1) through (4) remain the same.

~~(5) In order to receive Montana license renewal, any Montana-licensed pharmacist residing in another state shall meet Montana's requirements for continuing education. All licensees shall affirm an understanding of their recurring duty to comply with CE requirements as a part of annual license renewal.~~

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

(7) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.

AUTH: 37-1-319, MCA

IMP: 37-1-306, MCA

REASON: The board is amending this rule to align with and further facilitate the department's standardized renewal, administrative suspension, and audit procedures.

Following a recommendation by department legal staff, the board is amending (5) to align the affirmation of CE requirements at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures that licensees with mandatory CE affirm an understanding of their CE requirements, as part of a complete renewal application, instead of affirming CE completion.

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 adding (7) to clarify 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.

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

24.174.702 QUALIFICATIONS OF PHARMACY TECHNICIAN

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-301, 37-7-307, MCA

REASON: The board is repealing this rule to eliminate duplication and confusion with ARM 24.174.701, pharmacy technician registration. The board is relocating relevant provisions on scope of practice to ARM 24.174.703, as a more appropriate location.

24.174.2101 PHARMACIES-ANNUAL RENEWAL

AUTH: 37-7-201, MCA

IMP: 37-7-321, MCA

REASON: The board is repealing this rule and ARM 24.174.2102, 24.174. 2103, and 24.174.2107 because they are unnecessarily duplicative of the department's continuing education and renewal rules and standardized procedures.

24.174.2102 PHARMACY TECHNICIAN-RENEWAL

AUTH: 37-7-201, MCA

IMP: 37-1-141, 37-7-201, MCA

24.174.2103 RENEWALS

AUTH: 37-1-319, 37-7-201, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-7-201, MCA

24.174.2107 REGISTERED PHARMACIST CONTINUING EDUCATION-
NONCOMPLIANCE

AUTH: 37-1-319, MCA

IMP: 37-1-141, 37-1-306, MCA

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 Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdpba@mt.gov, and must be received no later than 5:00 p.m., August 2, 2019.

6. An electronic copy of this notice of public hearing is available at pharmacy.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 Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdpba@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 24.174.401, 24.174.507, 24.174.524, 24.174.602, 24.174.604, 24.174.612, 24.174.701, 24.174.703, 24.174.711, 24.174.835, and 24.174.2104 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 24.174.702, 24.174.2101, 24.174.2102, 24.174.2103, and 24.174.2107 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; facsimile (406) 841-2305; or to dlibsdpba@mt.gov.

10. Marcie Bough, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY
TONY KING, PharmD
PRESIDENT

/s/ DARCEE L. MOE

Darcee L. Moe
Rule Reviewer

/s/ GALEN HOLLENBAUGH

Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 25, 2019.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF EXTENSION OF
ARM 32.3.104 subject diseases or	)	COMMENT PERIOD ON
conditions and 32.4.502 pertaining to	)	PROPOSED AMENDMENT
importation of restricted or prohibited)	
alternative livestock	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On June 7, 2019, the Department of Livestock published MAR Notice No. 32-19-297 pertaining to the proposed amendment of the above-stated rules at page 714 of the 2019 Montana Administrative Register, Issue Number 11.

2. At the request of representatives from the captive cervid industry, the department is extending the comment period for MAR Notice No. 32-19-297 to August 5, 2019, to allow the representatives adequate time to gather data for the completion of their comments.

3. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on July 29, 2019, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., August 5, 2019.

BY: /s/ Michael S. Honeycutt
Michael S. Honeycutt
Board of Livestock
Department of Livestock

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

Certified to the Secretary of State June 25, 2019.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I and the amendment of ARM) PROPOSED ADOPTION AND
44.15.101, 44.15.103, 44.15.105,) AMENDMENT
44.15.106, 44.15.108, and 44.15.109)
pertaining to notaries public)

TO: All Concerned Persons

1. On July 26, 2019, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 261 of the State Capitol, at Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on July 12, 2019, to advise us of the nature of the accommodation that you need. Please contact Austin James, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 444-6197; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9038; or e-mail Austin.James@mt.gov.

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

NEW RULE I NOTARY PUBLIC JOURNAL RETENTION (1) A notary public must retain the notary's journal(s) at all times while holding an active commission unless the notary has satisfied the requirements set forth by (a).

(a) A notary who transmits control of the notary's journal(s) to the notary's employer shall complete the form prescribed by the Secretary of State and signed by the notary and the notary's employer indicating:

(i) the physical location where the journal(s) will be kept;

(ii) the name, phone number, and email of the employer or the custodian of the records; and

(iii) the notary's authorization for the designated custodian to release the records in accordance with 1-5-618(6), MCA, and the custodian's agreement to accept the responsibility and conditions.

(2) When a notary voluntarily resigns or chooses not to renew a commission, the notary may choose to transmit the notary's journal(s) to an approved repository by submitting the form prescribed by the Secretary of State and signed by the notary indicating:

(a) the physical location where the journal(s) will be kept;

(b) the name, phone number, and email of the proposed custodian of the records; and

(c) the notary's authorization for the designated custodian to release the records in accordance with 1-5-618(6), MCA, and the custodian's agreement to accept the responsibility and conditions.

AUTH: 1-5-628, MCA

IMP: 1-5-618, MCA

REASON: NEW RULE I(1) and (2) are reasonably necessary to create a process allowing a notary, as the legal custodian of records, to delegate their responsibility to another custodian under certain conditions. The proposed rule ensures the Secretary of State is aware and approved of the location of a notary's journals if not in the possession of the notary public. Lastly, the rule ensures that the approved custodian will provide access to the journals if necessary.

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

44.15.101 APPLICATION FOR A COMMISSION AS A NOTARY PUBLIC

(1) A person seeking a commission as a notary public shall make an application ~~on a~~ by submitting one or more of the requisite forms prescribed by the Secretary of State that includes the following information:

(a) applicant's name, which must consist of at least one initial and the notary's surname;

(b) through (f) remain the same.

(g) applicant's work email address;

(i) if the applicant is unemployed or self-employed, the applicant must submit an alternate contact person and the alternate contact's phone number or email address;

(g) remains the same but is renumbered (h).

~~(h)~~(i) the name under which the applicant's previous commission was issued (if applicable); ~~and~~

~~(i)~~(j) whether or not the applicant intends to provide remote and/or electronic notarization services, and, if so, the identification of the tamper-proof communication technology and/or the electronic notarization system(s) the applicant intends to use; and a copy of the certificate showing the notary has successfully completed an approved course of instruction and examination; and

(k) an exemplar of the applicant's official signature which must match the applicant's name as entered on the application and the surety bond and which must be used on all tangibly and electronically notarized records.

(2) The application shall indicate if the applicant:

(a) is at least 18 years old;

(b) is a citizen or permanent legal resident of the United States; and

~~(c) is a resident of or has a place of employment or practice in Montana;~~

(c) whether the applicant:

(i) is a resident of Montana;

(ii) has a place of employment or practice in Montana; or

(iii) is the spouse or legal dependent of military personnel assigned to active duty in Montana;

(d) can read and write English;

(e) has pled guilty, pled no contest, or been convicted of a felony or crime involving fraud, dishonesty, or deceit within the last 10 years;

(f) and (g) remain the same.

(3) The applicant must affirm under oath that the information on the application is true and correct and that the applicant will support and defend the Constitutions of the United States and the State of Montana and uphold the duties of the office of notary public.

(4) An applicant ~~who is not currently commissioned as a notary public~~ shall submit with the application ~~a certificate~~ certification proving the applicant has completed the required education and passed a notary public examination approved by the Secretary of State.

(a) New and renewing applicants must take and pass the examination no more than six months before submitting the application.

(i) A grade of 80% is considered passing.

(ii) If the applicant fails to achieve a passing score after three attempts, the applicant must wait three months before attempting to take the exam again.

AUTH: 1-5-628, MCA

IMP: 1-5-619, 1-5-620, MCA

REASON: Section (1) is reasonably necessary to ensure a notary public may be readily contacted if a question or issue arises about a notarial act performed by the notary public and that the Secretary of State has been notified of the notary's intent and qualification to perform remote notary services. Section (2) is reasonably necessary to ensure that the notary public has complied with the residency requirements. Section (3) is reasonably necessary to ensure the applicant has taken the notary public oath of office. Section (4) is reasonably necessary to ensure that the notary has complied with the education and examination requirements and is qualified to perform notarial acts.

44.15.103 NOTARY BOND (1) The applicant shall submit with the application and fee, a bond on the form prescribed by the Secretary of State from an approved bonding company in the amount of ~~\$10,000~~ 25,000 for the ~~duration of the period~~ full four-year term of the notary commission. The bonding company shall notify the Secretary of State's office within 30 business days if a claim is made against the bond or if the bond is canceled or otherwise not honored.

AUTH: 1-5-628, ~~2-4-201~~, MCA

IMP: ~~1-5-405~~, 1-5-619, MCA

REASON: Section (1) is reasonably necessary to ensure that a notary public has a compliant surety bond, for the correct amount, in effect for the entire term of the notary's commission.

44.15.105 FOREIGN NOTARY, APOSTILLE FEES, AND FEDERAL CERTIFICATE OF AUTHORITY (1) ~~The applicant~~ A person requesting certificate of authority of a record for a foreign country shall submit a \$10 nonrefundable application fee for each certification, together with a form as prescribed by the Secretary of State.

AUTH: ~~1-5-408,~~ 1-5-628, MCA

IMP: ~~1-5-607,~~ 1-5-608, MCA

REASON: Section (1) is reasonably necessary to clarify that the fee charged for a certification of authority is not an application fee and the order for a certificate of authority must be accompanied by a specific form.

44.15.106 NOTIFICATION TO SECRETARY OF STATE OF CHANGE IN INFORMATION OR STATUS (1) A notary public shall notify the Secretary of State within 30 calendar days of any change in the information on file with the Secretary of State, using the form prescribed by the Secretary of State, including the notary public's:

(a) through (c) remain the same.

(d) personal or work e-mail address;

(e) remains the same.

(f) alternate phone number or contact person;

(f)(g) employer's name, address, or and telephone number; and

(g)(h) use of electronic notarization system or communications technology.

(2) When a notary public changes the notary name on file with the Secretary of State, the notary public shall file with the Secretary of State:

(a) remains the same.

(b) an ~~example~~ exemplar of the notary's new official signature using the form prescribed by the Secretary of State.

(3) A notary public shall notify the Secretary of State within ~~44~~ 30 calendar days of:

(a) being convicted of or entering a plea of guilty or no contest to a felony or crime involving fraud, dishonesty, or deceit;

(b) and (c) remain the same.

(4) A notary public shall notify the Secretary of State within 30 calendar days on a form provided by the Secretary of State:

(a) if the notary public resigns an active commission prior to the expiration date;

(b) if the notary public moves out of state and no longer meets the residency requirements to hold a commission; or

(c) if the notary does not intend to renew the commission and include the following information:

(i) the date on which the resignation is effective;

(ii) the location where the notary's journals are to be stored; and

(iii) the notary's future contact information if different from the information on file with the Secretary of State.

AUTH: 1-5-628, MCA
IMP: 1-5-619, MCA

REASON: Sections (1) through (4) are reasonably necessary to ensure that the Secretary of State is informed of all relevant changes to a notary's name, status, and contact information in a timely manner and to ensure that the notary remains compliant with the qualifications for holding the office of notary public.

~~44.15.108 REAL-TIME, TWO-WAY AUDIO-VIDEO NOTARIZATIONS~~
~~(REMOTE AND REMOTE ONLINE NOTARIZATIONS)~~ (1) ~~Real-time, two-way audio-video notarizations~~ (Remote and remote online notarizations) shall only be performed using technology that allows the individuals communicating to simultaneously see and speak to one another.

(2) When performing remote or remote online notarizations, the signal transmission shall be live, real time.

(3) All remote and remote online notarizations shall be recorded electronically.

(4) Prior to performing any remote or remote online notarization, the notary public shall inform all individuals participating in the notarization that the notarization will be electronically recorded.

(5) All recordings of remote and remote online notarizations shall include a recitation by the notary public that includes the following:

(a) through (h) remain the same.

(i) ~~whether~~ how the individual for whom the notarial act is being performed is ~~being~~ has been identified by ~~personal knowledge or credible witness~~; and

(j) remains the same.

(6) All recordings of remote notarizations shall include a recitation by the individual for whom the notarial act is being performed that includes the following:

(a) remains the same.

(b) ~~the state in which~~ where the individual legally resides;

(c) remains the same.

(d) the date the individual signed the record being notarized; ~~and~~

(e) a declaration that the signature made on the record being notarized was made by the individual knowingly or voluntarily; and

(f) if the individual is located outside of the United States at the time of the remote notarization, a declaration that the individual is unaware of any legal conflicts that prohibit the individual's participation in a remote notarization.

(7) remains the same.

(8) If the individual for whom the notarial act is being performed is being identified by credible witness₁:

~~(a) the credible witness shall be in the physical presence of the notary public; and~~

~~(b) the recording of the remote notarization shall include:~~

~~(1)(a) a statement by the notary public as to whether how the notary public identified the credible witness by personal knowledge or satisfactory evidence was identified; and~~

(ii)(b) an explanation by the credible witness as to how the credible witness has come to know the individual for whom the notarial act is being performed and the length of time the credible witness has known the individual; and

(c) a sworn statement by the credible witness identifying the principal.

(9) If the individual for whom the notarial act is being performed was identified by means of identification technologies, the notary shall state the two or more types of technologies used.

AUTH: 1-5-628, MCA

IMP: 1-5-603, 1-5-615, 1-5-618, MCA

REASON: These amendments are reasonably necessary to implement the requirements of Senate Bill 370 which was passed by the 2019 Montana Legislature and is effective October 1, 2019. That bill updated and revised the existing notarial laws.

44.15.109 FEES FOR NOTARIAL ACTS (1) A notary public may charge a an additional fee in accordance with 1-5-626(2), MCA;:

(a) for traveling to perform a notarial act;:

(b) for performing a notarial act using an electronic notarization system or communications technology; or

(c) to recover the cost of providing a journal entry or audiovisual recording.

AUTH: 1-5-628, MCA

IMP: 1-5-626, MCA

REASON: These amendments are reasonably necessary to allow notaries to recover the additional costs associated with remote notarization and making copies of journal entries or recordings.

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: Austin James, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by emailing Austin.James@mt.gov, and must be received no later than 5:00 p.m., August 2, 2019.

6. Austin James, Secretary of State's Office, P.O. Box 202801, Helena, Montana, has been designated to preside over and conduct this hearing.

7. The Secretary of State 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 Secretary of State's Office, Administrative Rules Services, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-3976, or

may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on June 17, 2019.

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

/s/ AUSTIN JAMES

Austin James
Rule Reviewer

/s/ COREY STAPLETON

Corey Stapleton
Secretary of State

Dated this 25th day of June, 2019.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I pertaining to the administration)
of the Delivering Local Assistance)
(DLA) Program)

TO: All Concerned Persons

1. On May 24, 2019, the Department of Commerce published MAR Notice No. 8-94-166 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 562 of the 2019 Montana Administrative Register, Issue Number 10.

2. The department has adopted 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 NO. 1: Can DLA funds be considered as match for TSEP or CDBG grants already awarded? Can other State and Federal grants or loans be considered as match for DLA?

RESPONSE NO. 1: Thank you for your comment. Yes, in both cases.

COMMENT NO. 2: We are looking for help financing a major project for our school; removing and replacing most of our old, inefficient classroom heaters. Is this eligible for DLA?

RESPONSE NO. 2: Thank you for your comment. School district projects must complete activities that will address life safety or security issues, major repairs or deferred maintenance to an existing facility, or complete a major improvement or enhancement to an existing facility.

COMMENT NO. 3: Will the new HB 652 program treat school assistance requests the same as the previous Quality Schools Program?

RESPONSE NO. 3: Thank you for your comment. The Delivering Local Assistance program is a new and distinct program that has some similarities and some differences.

COMMENT NO. 4: How might the new program help with building a new hospital in Ekalaka?

RESPONSE NO. 4: Thank you for your comment. Eligible infrastructure projects can include improvements to public safety infrastructure which includes project activities to address emergency services needs.

COMMENT NO. 5: Reviewing the Centerville Quality Schools application and heard there would be more school funding coming. Is this true?

RESPONSE NO. 5: Thank you for your comment. Yes, the Delivering Local Assistance program makes available funding for eligible school district's projects.

COMMENT NO. 6: Does the DLA Program have a planning component that can fund PERs and PARs, or is it exclusively for construction?

RESPONSE NO 6: Thank you for your comment. The department will incorporate clarifications in the guidelines related to this comment. The Delivering Local Assistance program funds eligible infrastructure projects to eligible local governments that are impacted by natural resource development. Eligible Infrastructure Projects are listed in the application guidelines. Eligible local governments are encouraged to include all necessary project funding uses in the application to complete a project successfully; as an example, this could include planning costs, administrative costs, and construction-related costs.

COMMENT NO. 7: If a local government project received funding from other sources (especially state sources such as TSEP or RRGL), can it still receive funding from the DLA Program?

RESPONSE NO 7: Thank you for your comment. Yes.

COMMENT NO. 8: If a project goes into construction or out to bid, prior to applying for DLA funds, is the project still eligible for DLA funds?

RESPONSE NO 8: Thank you for your comment. The department will incorporate clarifications in the guidelines related to this comment. The project is eligible to apply; however, the application will be ranked based on need, which includes funding. If a project does begin construction, the department has placed limitations on the duration of time a project can incur costs before application to the program.

COMMENT NO. 9: Is a fire hall and/or a DES building/facility considered a facility for government administration?

RESPONSE NO 9: Thank you for your comment. Eligible infrastructure projects can include improvements to public safety infrastructure which includes project activities to address emergency services, law enforcement, or fire protection needs as well as projects that address needs for facilities for government administration.

COMMENT NO. 10: If TSEP or DNRC funds have been awarded to a project for Phase I, is the grantee eligible to apply for DLA funds for the same phase? For example: the Town of Dodson received \$362,150 in HB 11, can the town apply for \$387,850 of DLA funds?

RESPONSE NO. 10: Thank you for your comment. Yes.

COMMENT NO. 11: If TSEP or DNRC funds have been awarded to a project for Phase I, is the grantee eligible to apply for DLA funds for Phase II?

RESPONSE NO. 11: Thank you for your comment. Yes.

COMMENT NO. 12: Are infrastructure improvement projects related to levees eligible to apply for DLA funds?

RESPONSE NO. 12: Thank you for your comment. Eligible infrastructure projects can include improvements to public safety infrastructure which includes project activities to address emergency services, law enforcement, or fire protection needs as well as projects that address needs for facilities for government administration. Project activities proposed must meet the intent of the program and adequately respond to the application questions to receive funding.

COMMENT NO. 13: Understanding no matching funds are required, what would be the recommended match amount?

RESPONSE NO. 13: Thank you for your comment. No match is required; however, consideration of match in the project as it relates to the project activities will be considered as part of the application ranking process.

COMMENT NO. 14: Do the planning documents submitted with applications need to be comprehensive, such as a PER or PAR? Also, will a PER amendment be sufficient?

RESPONSE NO. 14: Thank you for your comment. The department will incorporate clarifications in the guidelines related to this comment. Planning documents specifically supporting project design, including but not limited to PERs or PARs, are not required. But if submitted, they should follow acceptable industry standards or the department's planning document standards, as applicable to the planning document.

COMMENT NO. 15: If a PER or PAR identify multiple phases for a project, but funding received is for only Phase 1, can the DLA Program be used to fund the additional phases, knowing they have already been identified in the planning document?

RESPONSE NO. 15: Thank you for your comment. Please see the response to Comment 11.

COMMENT NO. 16: Can HB 652 funds be used to assist a new Fire Hall/EMS facility in Red Lodge?

RESPONSE NO. 16: Thank you for your comment. Please see the response to Comment 9.

COMMENT NO. 17: "In regards to Polson's wastewater system needs, are the new HB 652 funds grant funds or loan funds and what are the next steps that Polson must take to access these funds?"

RESPONSE NO. 17: Thank you for your comment. The DLA Program provides grants and not loans. Please see the response to Comment 6.

COMMENT NO. 18: Can an entity apply for a DLA grant if they applied for and received a TSEP grant in the 2018 grant cycle (2019 biennium)? In the grant application guidelines under Eligible Funding, it specifically mentions applicants that apply for the DLA program who also applied for 2018 TSEP funding but did not receive legislative approval. Does that imply that projects that did receive TSEP funding would not be eligible?

RESPONSE NO. 18: Thank you for your comment. The Delivering Local Assistance program only limits the amount of funding a Treasure State Endowment project, that was submitted for approval to the 66th Legislature but did not receive approval for funding, can request from the Delivering Local Assistance program. The amount of project funding requested from the Delivering Local Assistance program must be the same as that requested from the aforementioned Treasure State Endowment program.

COMMENT NO. 19: Are grants eligible for the same amount that they would be eligible from TSEP? For example, if the applicant was eligible for a \$500,000 TSEP grant, would they only be eligible for a maximum of \$500,000 from the DLA program?

RESPONSE NO. 19: Thank you for your comment. Please see the response to Comment 18.

COMMENT NO. 20: How much money is available for DLA grants?

RESPONSE NO. 20: Thank you for your comment. \$21.5 million is available to award to eligible applicants.

COMMENT NO. 21: For the DLA program, is planning allowed as an eligible project cost? Could both planning and construction phases be included in one application?

RESPONSE NO. 21: Thank you for your comment. Please see the response to Comment 6.

COMMENT NO. 22: Are the projects that did receive TSEP funding allowed to apply for DLA funding? If so, can DLA funding be used to meet the TSEP match?

RESPONSE NO. 22: Thank you for your comment. Please see responses to Comments 1 and 18.

COMMENT NO. 23: Will this grant be available beyond 2021?

RESPONSE NO. 23: Thank you for your comment. This program is authorized for the 2021 biennium only.

COMMENT NO. 24: Who would I contact to discuss eligible projects for the new infrastructure program grants?

RESPONSE NO. 24: Thank you for your comment. Additional comments or questions can be directed to Montana Department of Commerce, Community Development Division, (406) 841-2770 or DOCCDD@mt.gov.

COMMENT NO. 25: Eligibility of a specific project. The City of Dillon has needs for their historic City Hall building. The needs include a new roof, ADA improvements, electrical, and plumbing improvements. As you know there is not much grant money out there for city administrative buildings. It appears from reading the information that city administrative buildings may be eligible. Is that the case and if so what kind of work would be eligible (i.e., roof, ADA, etc.)?

RESPONSE NO. 25: Thank you for your comment. Please see response to Comment 12.

COMMENT NO. 26: Would construction of a new water and sewer maintenance building to house the City of Dillon's department offices, lab, and equipment be eligible?

RESPONSE NO. 26: Thank you for your comment. Please see response to Comment 12.

COMMENT NO. 27: The application indicates a PER or PAR may be required, yet the intent of the dollars (authorization) is to get the money out the door for maximum impact in a timely manner. These documents are frequently 4-inch binders, take a year to produce, and cost \$40,000-\$50,000. Can the language be reduced to preparation of a feasibility study – outline economical and advantages of project rather than a full PER?

RESPONSE NO. 27: Thank you for your comment. Please see the response to Comment 14.

COMMENT NO. 28: If an applicant is submitting more than one application, what does it mean to prioritize? You could receive application(s) from four entities within a county – water and sewer district, county, school district, and municipality – how is the priority determined within the \$1.5 million in the county? Please clarify how the prioritization will occur.

RESPONSE NO. 28: Thank you for your comment. The department will incorporate clarifications in the guidelines related to this comment. Individual eligible applicants must prioritize their own applications, if they are submitting more than one application with overlapping boundaries. As an example, a city must prioritize city projects applied for, but does not need to prioritize based on a school district's project.

COMMENT NO. 29: The application indicates no more than 500 words per question. Do the sub questions include the 500 words or not? 1(a) gets 500 words, 500 more for 1(b), and so on? Please clarify.

RESPONSE NO. 29: Thank you for your comment. The department will incorporate clarifications in the guidelines related to this comment.

COMMENT NO. 30: Under financial capacity, it is the intent to maximize the dollars where natural resource impacts have occurred, how does analyzing the financial impact based on a budget work? There's no way to determine, from a budget, the impact in a community to all roads, bridges, and water & sewer systems to make a determination. The determination in this instance needs to be about the impacts of oil & gas, not fiscal amounts, user rates, et cetera for this program. Other programs do that but those are competitive in a different way, focus needs be on natural resource impacts.

RESPONSE NO. 30: Thank you for your comment. The department will incorporate clarifications in the guidelines related to this comment. The review of applications includes a review of the applicant's financial need, including those relative to the natural resource development impacts. User rates will only be reviewed if applicable.

COMMENT NO. 31: Asked again on page 7 about PER or PAR. Need to be really careful to not bog projects down with PER, PAR. Idea is to find most feasible, cost effective, efficient manner to complete projects without mound of paper.

RESPONSE NO. 31: Thank you for your comment. The department will incorporate clarifications in the guidelines related to this comment. Please see the response to Comment 14.

COMMENT NO. 32: Application alludes to additional points for a history of successfully managing and implementing grants for this system. What if it's a new system in the community? I don't want to see an applicant get extra points for having gotten grant money before and a community that hasn't worked with grants get penalized for never managing a grant.

RESPONSE NO. 32: Thank you for your comment. The department will incorporate clarifications in the guidelines related to this comment. The review of applications includes a review of the applicant's financial need, including those relative to the natural resource development impacts. Ranking considerations also includes the review of audits and, as applicable, administration of previous projects.

COMMENT NO. 33: Please respond or explain how the department will award \$10.75 million to local governments other than school districts and \$10.5 million to school districts as set forth in the bill.

RESPONSE NO. 33: Thank you for your comment. Once applications have been received the department will rank applications and award funding based on the ranking established in the guidelines and any limitations set forth in HB 652. HB 652 provides that "\$10.75 million must be distributed to local government for school district infrastructure projects."

COMMENT NO. 34: This program is listed in HB 652 along with some TSEP projects whose awards were restricted due to target rates. This program does not have discussion about target rates. Please clarify if an applicant also received TSEP funds or have been approved for that process, are they eligible for this process or are they exempted?

RESPONSE NO. 34: Thank you for your comment. Target rates do not apply to the Delivering Local Assistance program. Yes, an applicant may be eligible for both.

COMMENT NO. 35: Along with PER/PAR question earlier, it is stated one has either been completed or will be completed, so there is no option for another type document. It was my understanding this program could be for projects that don't require a full PER/PAR and if applies could make projects more costly. Please clarify.

RESPONSE NO. 35: Thank you for your comment. Please see the response to Comment 14.

COMMENT NO. 36: Applications are being received June 1 – September 30. Unclear on how or when projects will be awarded. Will they all be saved until June 30 then awarded or will they be awarded on first come first served or how they are coming into the process? The award process may make a difference on whether the project can happen this summer or next summer.

RESPONSE NO. 36: Thank you for your comment. The department will incorporate clarifications in the guidelines related to this comment. Applications can be submitted beginning June 1, 2019 and no later than September 30, 2019. Awards will be made, and applicants will be notified of awards in late fall 2019.

COMMENT NO. 37: Reiterated comments about full PER/PAR and making the process drawn out.

RESPONSE NO. 37: Thank you for your comment. Please see response to Comment 14.

COMMENT NO. 38: General comment on having a process that is fair, equitable, expedient, and having details up front. Since the Legislation passed, hoping that answers to today's questions are received in a timely fashion and questions from legislators will come in about how the process went, meeting expectations, and legislators have answers about the process for questions they may receive locally.

RESPONSE NO. 38: Thank you for your comment.

COMMENT NO. 39: It is my understanding if you applied for TSEP and didn't receive funding, you can only apply here for the original amount. The TSEP projects listed here in HB 652 do not provide enough funding for all projects and have to meet start up conditions on a timeline, some might jump ahead of other projects in the priority order. So, if a project is low on the 652 list when and who is allowed to come in for this program. Please clarify.

RESPONSE NO. 39: Thank you for your comment. Please see responses to Comments 7 and 18.

COMMENT NO. 40: We are in substantial need for safety money to complete a security camera project, fix an aging PA system so that all staff can hear when a lock down is announced, and in need of completely re-keying the school and upgrading the locking mechanisms. However, I'm unsure if we will qualify for the new grant as we do not have coal or gas issues in our county. Can you clarify this for me when you have a moment?

RESPONSE NO. 40: Thank you for your comment. Please see the response to Comment 6.

COMMENT NO. 41: If the DLA program is administered with the same target rate requirements as the TSEP program the City of Sidney will remain ineligible for grant assistance. We strongly request that the final application delete the target rate requirement altogether or use the target rate per the 2000 Census for incomes.

RESPONSE NO. 41: Thank you for your comment. Target rates do not apply to the Delivering Local Assistance program.

/s/ Garrett Norcott
Garrett Norcott
Rule Reviewer

/s/ Tara Rice
Tara Rice
Director
Department of Commerce

Certified to the Secretary of State June 25, 2019.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 12.5.709 pertaining to the Pilot)
Program for Aquatic Invasive Species)
in the Flathead Basin)

TO: All Concerned Persons

1. On May 24, 2019, the Department of Fish, Wildlife and Parks published MAR Notice No. 12-514 pertaining to the proposed amendment of the above-stated rule at page 577 of the 2019 Montana Administrative Register, Issue Number 10.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

/s/ Martha Williams
Martha Williams
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State June 25, 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 37.27.902, 37.85.104,)
37.85.105, 37.85.106, and 37.88.101)
pertaining to Medicaid rates, services,)
and benefit changes)

TO: All Concerned Persons

1. On May 24, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-878 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 618 of the 2019 Montana Administrative Register, Issue Number 10.

2. The department has amended the following rules as proposed: ARM 37.27.902, 37.85.104, 37.85.106, and 37.88.101.

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

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY
ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID
PROVIDER FEE SCHEDULES (1) remains as proposed.

(2) The department adopts and incorporates by reference, the resource-based relative value scale (RBRVS) reimbursement methodology for specific providers as described in ARM 37.85.212 on the date stated.

(a) remains as proposed.

(b) Fee schedules are effective July 1, 2019. The conversion factor for physician services is ~~\$36.46~~ \$38.46. The conversion factor for allied services is \$23.97. The conversion factor for mental health services is \$23.36. The conversion factor for anesthesia services is \$30.03.

(c) through (6) remain as proposed.

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

IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

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

COMMENT #1: Although several commenters expressed general support for rate increases, they stated that the proposed Medicaid reimbursement rates do not cover

the costs of providing care and they questioned the expenditure of state appropriations.

RESPONSE #1: The 2019 Legislature explicitly directed the department to adopt funding for provider rate increases in the amount of .91% in State Fiscal Year (SFY) 2020. (See pages B-2 and B-51 of the Legislative Fiscal Division's HB 2 narrative, found at: <https://leg.mt.gov/content/Publications/fiscal/2021-Session/Section-B-Brown.pdf>.)

The department's authority to establish rates is found in 53-6-113, MCA, which sets forth a non-exhaustive list of factors the department may consider in establishing Medicaid rates of provider reimbursement, including the availability of appropriated funds. In proposing and adopting provider rates for SFY 2020, the department's primary considerations were the availability of appropriated funds and the Legislature's explicit direction to fund provider rate increases of .91% in SFY 2020.

The department believes that the Medicaid rates are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services will be available to members across Montana.

As stated in the department's comments at the hearing, the department noted a clerical error on the physician conversion factor in ARM 37.85.105(2)(b). The physician conversion factor was incorrectly listed in the original rule notice. The department has corrected this error to reflect the accurate physician conversion factor of \$38.46.

COMMENT #2: A commenter expressed support for the proposed conversion factors and provider rate of reimbursement for Optometric providers but opposed certain aspects of the proposed rule. The commenter stated the department is not following 37-10-104, MCA, in that optometrists are not reimbursed for services in the same manner as other ocular practitioners rendering similar services. The commenter concluded that as long as the department continued to discriminate among licensed ocular practitioners it will be in violation of Montana state law and the commenter must oppose the proposed rule.

RESPONSE #2: The department disagrees with the comment that the rate structure violates Montana law. The department must follow Montana law, and 53-6-125, MCA requires the department to reimburse physicians with doctor of medicine (MD) and doctor of osteopathy (DO) degrees using a conversion factor different from other healthcare professionals, including optometrists. However, the department uses the same resource-based relative value scale (RBRVS) methodology in determining reimbursement rates for ophthalmologists and optometrists, and thus they are reimbursed in the same manner. Prior to 2008, optometrists were reimbursed using the same conversion factor as physicians. In 2007, the Montana 60th Legislature passed Senate Bill (SB) 354, which defined and clarified the Medicaid reimbursement conversion factor for physicians. SB 354, which is codified in 53-6-124, MCA and 53-6-125, MCA defined "physician" as a person who holds an MD or

DO degree and who has a valid license to practice medicine or osteopathic medicine in Montana. It must be presumed that the Legislature in 2007 was aware of 37-10-104, MCA, cited by the commenter, because that statute has been in existence since 1959. Also, if the legislature in 2007 intended for the physician conversion factor to apply to optometrists, it would have included them in the definition of physician but did not.

COMMENT #3: A commenter expressed concern regarding the dental codes that are not on the Dental Hygienist Services fee schedule. The commenter suggested certain codes should be added to the Dental Hygienist Services fee schedule because they are within the scope of practice for Limited Access Permit (LAP) Dental Hygienists. Specifically, Current Dental Terminology (CDT) codes D0190, Pre-Diagnostic Service Screening, and D0919 Assessment of a patient treatment, in addition, to several other procedure codes. The commenter also asked how tele-dentistry might work within their scope of practice.

RESPONSE #3: The department concurs and will add the above-referenced codes to the dental hygienists services fee schedule. The Montana Medicaid program does not currently reimburse for tele-dentistry. The department will continue its collaborative work with impacted providers.

COMMENT #4: A commenter expressed general support for MAR Notice No. 37-878, but questioned the reimbursement for compounded medications. The commenter suggested the department consider a change in the reimbursement rate for compounded products stating they are often filled well below cost.

RESPONSE #4: The department set the current compounding rate on a past study. Based on the comment, department staff will work with the Montana Pharmacy Association and compounding pharmacies to update the study to determine if additional changes to the professional dispensing fee for compounding medications are appropriate.

COMMENT #5: The department received several comments expressing support of the provider rate increase.

RESPONSE #5: The department thanks the commenters for their support.

COMMENT #6: Multiple commenters stated that the reimbursement rate for peer support specialists is inadequate to fund staff and programs.

RESPONSE #6: The department believes the peer support rate is consistent with efficiency, economy, and quality of care and is sufficient to enlist enough providers so that care and services are or will become available to members as this new service grows. The service was piloted in the last biennium at the current rate. The rate for Medicaid behavioral health peer support services was researched and compared with other states in Region 8 of the Substance Abuse and Mental Health

Services Administration (SAMHSA) and is slightly higher to account for the cost of providing care in this very frontier state.

COMMENT #7: Multiple commenters stated that the Targeted Case Management (TCM) rate cuts had a negative impact on organizations providing case management and behavioral health services and the clients they serve.

RESPONSE #7: In response to comments received and based on available legislative appropriation, the department will increase the TCM rate to \$13.32, per 15 minute unit. In establishing this rate, the department considered the following factors: average hourly salary, fringe benefits, administrative and overhead costs, additional operating costs, program support, and mileage. The department will continue its collaborative work with providers to maintain a Medicaid benefit package designed to improve health and reduce costs.

COMMENT #8: Multiple commenters expressed concern that the rule change would disallow concurrent treatment of co-occurring diagnosis.

RESPONSE #8: Thank you for your support of integrated services. The department has revised the manual to eliminate confusion that was caused by proposed language.

The department encourages integrated services for members who have a co-occurring mental health and substance use disorder diagnosis. Integrated treatment of co-occurring diagnosis is a best practice and recommended by SAMHSA. We encourage services with bundled reimbursement to provide integrated care to address the full person.

The department is responding to comments that pointed out this error by clarifying what services can be billed as a bundle and what is included in the bundled rates. When applicable, the department is also indicating when services do not have to be billed in a bundle and may be billed separately. The department has removed the concurrent services section of each service level entirely because we believe it has caused unnecessary confusion.

COMMENT #9: Multiple commenters opposed the Medicaid requirement for member information (such as name, social security number, etc.) to be required for Medicaid reimbursement. Opposition was based on difficulty of gathering information and the need for outreach, engagement, and crisis services as part of the Peer Model.

RESPONSE #9: The 2019 Legislature made Peer Support services a required Medicaid covered service. Previously, providers were reimbursed from federal block grants and the requirement for obtaining member information and demographics was not as stringent as Medicaid requirements. Medicaid is governed by state and federal rules, regulations, and statutes. All providers seeking reimbursement from Montana Medicaid must follow Medicaid rules and regulations as a result of the 2019

legislation that moved funding for peer support to Medicaid. Medicaid billing requires name, date of birth, address, phone number, and Medicaid number, much like other kinds of insurance.

COMMENT #10: Multiple commenters opposed the medical necessity criteria of a Severe and Disabling Mental Illness (SDMI) diagnosis or a Substance Use Disorder (SUD) diagnosis for Peer Support services.

RESPONSE #10: As stated in the response to Comment #8, the 2019 Legislature made Peer Support services a required Medicaid covered service. Medicaid is governed by state and federal statutes and rules. The department cannot remove the requirement of a diagnosis, as that is a federal Medicaid requirement. The department cannot expand its coverage to diagnoses that are not mental health and/or substance use disorder related without an appropriation to do so.

COMMENT #11: One commenter voiced concern about transportation no longer being an allowable service of a peer support.

RESPONSE #11: A Certified Behavioral Health Peer Support Specialist (CBHPSS) can provide a variety of face-to-face services. However, transportation is not one of the core services defined by current best practices. The department encourages the provision of peer support services in the community setting. The rule does not prohibit a CBHPSS from coaching, supporting, and facilitating transportation to and from appointments that support a member through the process of change to improve their health and live a self-directed life. Transportation to medical services is a separate benefit under the Montana Medicaid program.

COMMENT #12: Multiple commenters advocated for Medicaid reimbursement of CBHPSS facilitated groups.

RESPONSE #12: The department appreciates the comments. Groups led by CBHPSS will not be eligible for Medicaid reimbursement at this time.

COMMENT #13: One commenter requested longer-term prior authorizations and longer time periods between continued stay reviews for 3.1 homes to support patient stability and security for better treatment outcomes.

RESPONSE #13: The department is not making any changes to its utilization review because it is out of the scope of the current rulemaking. However, we appreciate the comment and we will consider this comment for future rule changes.

COMMENT #14: One commenter asked if CBHPSS have to be enrolled as a rendering provider with Conduent in order to bill for services.

RESPONSE #14: Peer Support Specialists do not need to enroll as a rendering provider with Conduent in order to bill for services.

COMMENT #15: Two commenters asked whether or not SUD screening and evaluations are required, and whether a screening, brief intervention, and referral to treatment (SBIRT) is required prior to conducting an assessment.

RESPONSE #15: SBIRT is a primary care best practice but its use is not mandated. Medicaid asks that clinicians use best professional judgment in determining whether a screening is necessary prior to conducting an assessment.

COMMENT #16: One commenter asked whether or not SUD services will be billed under the same taxonomy currently used. This question is based on Healthcare Common Procedure (HCPCS) codes being used for bundled services and Current Procedural Terminology (CPT) codes for non-bundled services.

RESPONSE #16: The department does not fully understand the comment. Proposed changes to the SUD Medicaid and Non-Medicaid Fee Schedule are available to review and will always be available to review prior to implementation. HCPCS codes include fee-for-service, per diem, and bundled rates. CPT codes can be found on the Resource-Based Relative Value Scale (RBRVS) Proposed Fee Schedule, located at <https://medicaidprovider.mt.gov/providertype#49243823-site-index>.

COMMENT #17: Two commenters asked for clarification as to whether SUD providers can bill for school-based services and whether psychoeducation will still be an available service under the block grant.

RESPONSE #17: School-based services and psychoeducation will remain a billable service within the SUD block grant. Information pertaining to this service was removed from the proposed "AMDD Non-Medicaid Services Provider Manual for Substance Use Disorder" and will be included within the block grant contracts with the department.

COMMENT #18: One commenter asked whether all clients billed using the enhanced per diem rate for providing therapeutic mental health services must be seen by a dually licensed counselor.

RESPONSE #18: The department expects that therapeutic mental health services be provided by a mental health professional. That professional does not need to be dually licensed.

COMMENT #19: One commenter recommended that the department follow American Society of Addiction Medicine (ASAM) guidelines consistently and to allow 2.5 services to be offered in locations that meet the needs of the client rather than a facility that offers 3.7 level of care.

RESPONSE #19: ASAM 2.5 services have historically been provided in 3.7 facilities to allow for the direct access to psychiatric, medical, and laboratory services as stated in ASAM, and is located within the ASAM 3.7 licensing requirements.

However, the department appreciates this feedback and will amend the language in the manual to allow for the provision of ASAM 2.5 that complies with licensure rule and the program has direct access to psychiatric, medical, and laboratory services on site.

COMMENT #20: One commenter opposed the requirement that only licensed mental health professionals can provide Dialectical Behavioral Therapy (DBT) and requests that the department allow Licensed Addictions Counselors with DBT training to provide the service.

RESPONSE #20: This comment is outside the scope of this rulemaking as the requirement that a licensed mental health professional provide DBT was not changed during this rulemaking. However, we appreciate the comment, will research it, and will consider the comment for a future rulemaking.

COMMENT #21: One commenter stated there needs to be a definition of education requirements required to diagnose and treat substance abuse disorders as the rule appears to do away with A.A. degrees.

RESPONSE #21: The Board of Behavioral Health outlines the requirements and scope of education requirements for professions to diagnose and treat substance abuse disorders. This rule does not make any changes to those requirements.

COMMENT #22: One commenter stated that family therapy is separate, not bundled with individual and group therapy and asks if they should be separate core services.

RESPONSE #22: The department is not clear what bundled service the commenter is referring to. We agree that family, individual, and group therapy are different services. Therapy is one core component of ASAM 2.1 services.

COMMENT #23: One commenter asked if drug testing falls under one of the core services for Intensive Outpatient Services.

RESPONSE #23: Dip stick drug testing is a component of the bundled service rate for Intensive Outpatient services (IOP) but is not considered one of the core services that meets the service requirements of billing the IOP bundled rate. Urinalysis may be billed outside the bundle as clinically appropriate.

COMMENT #24: One commenter asked if only one assessment is billable a year, how that applies to mental health and substance use disorder assessments, and if they are both billed under the same code.

RESPONSE #24: The department asks the commenter to follow the CPT code parameters in determining how to bill assessments.

COMMENT #25: One commenter requested DPHHS/AMDD to initiate a 1115 waiver to allow a comprehensive array of behavioral health services for vulnerable populations and all Montanans.

RESPONSE #25: This comment is outside the scope of this rulemaking. The department will continue to work with providers and the appropriate authorities to implement innovative and required changes to the behavioral health and health care system to support the needs of vulnerable populations and all Montanans. An 1115 waiver may or may not be the appropriate federal authority under which the department chooses to apply.

COMMENT #26: Multiple commenters requested clarification regarding the ability to bill for services prior to completed assessments.

RESPONSE #26: If a service requirement includes a specific diagnosis, the billing provider must be able to show documentation that supports that diagnosis.

COMMENT #27: One commenter requested clarification on whether or not an individual in a detention center is eligible for Medicaid reimbursement.

RESPONSE #27: This comment is outside the scope of this rulemaking.

COMMENT #28: One commenter asked whether an assessment done by a previous provider in the past 12 months must also be obtained or whether the new provider could complete their own assessment instead.

RESPONSE #28: The department requests that the commenter follow clinical best practices. If a provider believes an assessment is medically necessary, he or she should conduct one.

COMMENT #29: One commenter stated that the AMDD Medicaid manual has a numbering error on page 56.

RESPONSE #29: The department will fix this error. The department notes that the proposed manual had a bolded statement under the Table of Contents that numbering would be updated upon adoption.

COMMENT #30: One commenter asked for a definition of crisis services.

RESPONSE #30: In response to this comment, the department added a definition of crisis services to the manual.

COMMENT #31: One commenter asked for a definition of care coordination.

RESPONSE #31: In response to this comment, the department added a definition of care coordination to the manual.

COMMENT #32: One commenter asked if the department tracks recidivism for SUD treatment facilities stating that there is a lack of accountability from providers regarding the quality of care being provided.

RESPONSE #32: The department intends to pilot the use of the DLA-20 for IOP services as a means for outcome measurement and monitoring. In addition, the department will be completing a longitudinal study of both IOP and Peer Support to review what services Medicaid members have received before, during, and after receiving those services. This will be the Montana Medicaid's first behavioral health outcome study that has been incorporated into rule. This outcome study and its rule will be reviewed, revised and possibly expanded in future rulemakings.

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

/s/ Brenda K. Elias

Brenda K. Elias
Rule Reviewer

/s/ Sheila Hogan

Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 25, 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 37.40.307 pertaining to nursing)
facility reimbursement)

TO: All Concerned Persons

1. On May 24, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-882 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 631 of the 2019 Montana Administrative Register, Issue Number 10.

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: A commenter stated that the proposed nursing home Medicaid reimbursement rates for State Fiscal Year (SFY) 2020 do not cover the actual average cost of providing care to the residents, including the cost of complying with new federal regulations, general inflation, and increasing care needs of residents.

RESPONSE #1: ARM 37.40.307(2)(c) sets forth a non-exhaustive list of "[f]actors that could be considered" in the establishment of the statewide price for nursing facility services. Section 53-6-113, MCA, also sets forth a non-exhaustive list of factors, including the availability of appropriated funds, the department may consider in establishing the average statewide price. Actual cost of services is one of several factors the department may consider in establishing the average statewide price. In balancing the factors that may be considered, the department's primary consideration was the availability of appropriated funds and that the legislature funded provider rates increases of 0.91% for SFY 2020. The average statewide price proposed by the department appropriately balances the factors that may be considered.

COMMENT #2: A commenter stated that there are additional costs associated with high acuity Medicaid residents that the proposed rates do not address.

RESPONSE #2: The current reimbursement methodology adjusts a facility's rate based on the level of care the facility's residents require. If a facility's residents require a higher level of care, the rate is adjusted upward. This is referred to as the "acuity adjustment." The acuity adjustment is based on the facility's Medicaid average case mix index and the statewide average Medicaid case mix index.

Each nursing facility receives the same operating per diem rate, which is 80% of the statewide rate. The remaining 20% is the direct resident care component of the rate and is acuity-adjusted. Each facility's direct resident care component rate is specific to that facility and is based on the acuity of Medicaid residents served in that facility. As acuity changes in each facility, based on the level of complexity of the residents being served relative to the statewide acuity, facility rates adjust upward or downward to account for this change in acuity. The statewide average acuity has gone from 1.0072 in 2016, to 1.0114 in 2017, to 1.0185 in 2018, to 1.0200 in 2019, and is currently at 1.0130. The current methodology adjusts 20% of the total rate for acuity, which was a desired characteristic when the price-based reimbursement system was first adopted to mitigate wide fluctuations in rates when acuity changes occurred in facilities.

COMMENT #3: A commenter recommends the SFY 2020 rates be increased to include additional reimbursement to address rate reductions from January 1, 2018.

RESPONSE #3: Given the availability of appropriated funds and legislative direction to increase provider rates by 0.91%, the department does not believe it is appropriate to calculate the SFY 2020 average statewide price based upon the prior rate reduction.

COMMENT #4: A commenter stated the notice of this proposed rulemaking is inadequate because it does not adequately describe how the average statewide price was calculated.

RESPONSE #4: The department respectfully disagrees. The notice meets the requirements of the Montana Administrative Procedure Act. The proposed rulemaking notice provides the public with notice of the proposed substantive rule changes in plain, easily understood language. The statement of reasonable necessity describes the factors considered by the department and basis for calculating the average statewide price. The department explained that the calculation included consideration of sufficient funding. This was a principal reason for the proposal to increase provider rates by 0.91% because the Legislature directed the department to increase provider rates by 0.91%.

COMMENT #5: A commenter asked what specific process was used to calculate the average statewide price and individual nursing facility reimbursement rates including how the department considered sufficient funding and access to services.

RESPONSE #5: The department considered the non-exhaustive list of factors set forth in 53-6-113, MCA. Sufficient funding was considered based upon funds appropriated by the legislature and legislative direction for provider rate increases of 0.91% for SFY 2020. Access to services was considered primarily by reviewing facility reports showing the percentage of beds paid by Medicaid and other payors as well as any changes in the number of beds in facilities and the number of open facilities.

COMMENT #6: A commenter indicates the department did not take into account the cost of providing services and quality of services. The commenter asks why these factors were not taken into account.

RESPONSE #6: The department considered the non-exhaustive list of factors set forth in 53-6-113, MCA, including cost of providing services and quality of services. The department also considered availability of appropriated funds and the legislature funded provider rate increases of 0.91% for SFY 2020.

COMMENT #7: A commenter suggests the department provide certain information as part of future rulemaking.

RESPONSE #7: The information provided in this rule notice is sufficient to enable comment on the proposed rule. The department will consider for future rule changes the commenter's suggestions.

4. The department intends to apply this rule amendment retroactively to July 1, 2019. A retroactive application of the proposed rule 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 June 25, 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 March 31, 2019. This table includes notices in which those rules adopted during the period January 11, 2019, through June 21, 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 March 31, 2019, 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 2019 Montana Administrative Registers.

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MONTANA ADMINISTRATIVE
REGISTER

2019 ISSUE NO. 13
JULY 5, 2019
PAGES 903-986

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