

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 PUBLIC HEARING ON
2.21.1931, 2.21.1932, 2.21.1933,	)	PROPOSED AMENDMENT
2.21.1934, 2.21.1937, 2.21.1938,)	
2.21.1939, 2.21.1940, and 2.21.1941)	
pertaining to the Voluntary Employees')	
Beneficiary Association (VEBA))	

TO: All Concerned Persons

1. On September 12, 2019, at 1:00 p.m., the Health Care and Benefits Division of the Department of Administration will hold a public hearing in the State Procurement Bureau Conference room, Room 165, Mitchell Building, at 125 N. Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. Attendees may participate by telephone by contacting Melanie Denning at the phone number or email in paragraph 2 by 5:00 p.m., September 6, 2019.

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 September 4, 2019, to advise us of the nature of the accommodation that you need. Please contact Melanie Denning, Department of Administration, Health Care and Benefits Division, 100 North Park Avenue, Suite 320, Helena, Montana 59620; telephone (406) 444-3745; fax (406) 444-0080; TDD (406) 444-1421; or e-mail mdenning@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The Montana Voluntary Employees' Beneficiary Association Act was enacted in 2001 as a means for public employers in Montana to help their employees and retirees pay for their qualified health care expenses (i.e., prescription drugs, dental expenses, and health insurance premiums). Participation by state employees in the Montana Voluntary Employees' Beneficiary Association Health Reimbursement Account (Montana VEBA HRA) was initially governed by a Montana Operations Manual policy. In 2005, the policy was replaced by these rules to extend the application to other public employers like cities and counties that signed an adoption agreement to participate in the program. These rules were amended in June 2013 to: (1) address the transfer of a state employee to another public employer; (2) allow public employers other than the state to make contributions for active employees; and (3) increase the minimum group size to five.

The federal Patient Protection and Affordable Care Act (PPACA) was enacted in March 2010. The PPACA added new requirements for health plans, including among other requirements, offering all federally recommended preventive services at no cost to a plan participant and unlimited reimbursement of qualified healthcare

expenses. Then in September 2013, the U.S. Treasury and Labor departments published Notice 2013-54 and Technical Release 2013-03, respectively, to explain how the PPACA applies to an HRA.

The PPACA essentially created two options: (1) to continue participation by former employees only or (2) to allow active employees to participate and discourage any participation by former employees. Evaluating the PPACA guidance in light of who was eligible at that time (active employees, pre-65 retirees, and post-65 retirees), the department believed it was not administratively feasible to continue allowing participation by active employees.

To keep active employees as Montana VEBA HRA participants and comply with the PPACA requirements, a participating employer must offer other major medical coverage (e.g., the State of Montana Employee Benefit Plan) and require that employees and retirees enroll in that coverage if they want to participate in the Montana VEBA HRA.

Keeping active employees as participants also means that pre-65 retirees can no longer obtain subsidized coverage on the Exchange, an online marketplace for consumers to purchase individual insurance policies (a state can run its own exchange or use the federal exchange portal, HealthCare.gov). Exchange coverage is typically less expensive than retiree coverage on any public entity health plan. A pre-65 retiree who wants to participate in the Montana VEBA HRA would be required to enroll in the employer's health plan at a potentially greater cost to that retiree. Additionally, pre-65 retirees would be limited to the use of Montana VEBA HRA funds for deductible, copayments, premiums for the employer's health plan, and certain limited medical expenses that a health plan is not required to cover, such as massage therapy.

Post-65 retirees would face similar limitations to participate in the Montana VEBA HRA with active employees. Post-65 retirees could not use Montana VEBA HRA funds to pay for Medicare or Medicare supplemental premiums. Post-65 retirees could only use the funds to pay for dental and vision expenses.

Currently, all retirees (pre-65 and post-65) may use Montana VEBA HRA funds for any medical expense eligible under IRC section 213(d), including premiums for Medicare and Medicare supplemental coverage. Allowing participation by active employees would discourage any participation by public entity retirees in the Montana VEBA HRA because retirees could not obtain reimbursement for Medicare premiums and Medicare supplemental coverage or enroll in the most affordable retiree health coverage.

Therefore, the department believed the solution most reflective of the legislature's intent to help retirees with their medical expenses and administratively feasible was adoption of the Montana VEBA HRA as a separation-only plan for former employees (e.g., retirees) and establishment of a limited scope option for dental and vision expenses. The PPACA creates an exception for retiree-only plans such that these plans, if covering less than two active employees, are not required to offer the required PPACA benefits (e.g., federally recommended preventive services). The PPACA also creates an exception for limited scope health plans for dental and vision expenses from the same requirements. The department believed a limited scope dental and vision plan was necessary for retirees who might return to

work for the same public entity or a different public entity that is also a participating employer.

The department believes limiting participation to retirees and others who separate from service would have minimal, if any, impact on public entity employees, since no active employees of Montana public employers have ever participated in the Montana VEBA HRA. The department further notes that active employees benefit financially if the employer contribution of accrued sick leave is converted when the employee separates from service because the employee's hourly rate at retirement is generally higher than the hourly rate throughout the prior years of employment.

Therefore, the department proposes to formally recognize the Montana VEBA HRA as a separation-only plan — meaning only those employees who have terminated their employment may, if all other requirements have been met, have a tax-free account in the Montana VEBA HRA to help pay their qualified medical expenses. The department also created a limited scope health plan to reimburse dental and vision expenses for retirees returning to work for the same public entity or another public entity that is a participating employer. Enrollment forms and other plan materials were updated to explain these changes.

Consistent with these changes, the department proposes adopting the term "participant" to describe an employee who separates from service and completes the steps to establish an account in the Montana VEBA HRA. The department also revised the term "member" to describe an active employee who votes annually with other employees to establish a group or change the structure of an existing group. The department took this approach because in educational presentations throughout state government and for cities, counties, K-12 schools, and the Montana University System, employees have been confused about who belongs to a group and who can access funds to pay for qualified medical expenses. It is hoped this separation between member and participant will help employees understand the difference in an employee's status.

The department intends to propose similar changes to the Montana Voluntary Employees' Beneficiary Association Act in the 2021 legislative session. Adoption of the proposed changes in this notice will make the rule consistent with changes made in 2013 to the Montana VEBA HRA to comply with federal PPACA rules. Regardless of the outcome of this rule amendment process and proposed legislation for the 2021 session, the department must continue to administer the Montana VEBA HRA in a manner that complies with federal PPACA requirements.

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

2.21.1931 OBJECTIVES (1) The ~~state of Montana~~ Department of Administration administers a Voluntary Employees' Beneficiary Association (VEBA) that allows Montana public employees to access health reimbursement accounts for themselves, their spouses, and ~~their~~ other tax-qualified dependents to pay qualified health care expenses. The VEBA is funded by employer contributions and earnings from investment of the contributions. This program is called the Montana VEBA

Health Reimbursement Account (Montana VEBA HRA), and is the plan established under Title 2, chapter 18, part 13, MCA.

~~(2) The Department of Administration shall approve groups across the state, provide access to the Montana VEBA HRA by eligible contracting employers, and determine the investment vehicles available to members.~~

(3)(2) The objective of these rules is to establish consistent uniform and cost-effective procedures for ~~establishing and maintaining groups and account contributions~~ plan administration.

AUTH: 2-18-1305, MCA

IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend (1) to clarify that use of VEBA funds is limited to qualified health care expenses of a participant's tax-qualified dependents. Without this change, the rule may appear to permit use of VEBA funds for the expenses of a dependent who is not a tax-qualified dependent. For example, a participant's child is a tax-qualified dependent for the entire taxable year in which the child turns 26. After that, the child is no longer a tax-qualified dependent. In addition, the proposed change to (1) adds clarification regarding expenses eligible for reimbursement from VEBA funds.

The department proposes deletion of (2) because it provides a general reference to a portion of the department's duties in ARM 2.21.1933 and 2.21.1939 instead of stating an objective of the program. The department is responsible for all aspects of plan administration and believes the reference to a subset of the department's duties is misleading. The department believes (1) sufficiently describes the program, the legislature's goal for the program, and the department's role to administer this program. The department's duty to decide investment options for the participant funds in the Montana VEBA HRA was added to ARM 2.21.1933 as new (1)(j).

The department proposes a change to (3) to provide an accurate statement of the department's duties described in ARM 2.21.1933. Without amending the language of (3), it could appear the department's duties are limited to establishing and maintaining groups and account contributions.

2.21.1932 DEFINITIONS In addition to the definitions found in 2-18-1303, MCA, the following definitions apply to this subchapter:

~~(1) "Contracting employer" means an employer who, as provided in 2-18-1310, MCA, has contracted with the department to participate in the plan.~~

(1) "Dependent" means the tax-qualified dependent of the participant as determined under section 105(b) of the Internal Revenue Code, 26 USC 105(b), as amended. A tax-qualified dependent includes the participant's spouse recognized under the laws of the state in which the marriage was first established, and any child who has not, as of the end of the taxable year, attained age 27.

(2) remains the same.

(3) "Employee" means a person employed ~~by an employer who is in a pay status of~~ at least 1040 hours each year, ~~but does.~~ An employee is not include an independent contractor or person hired by the employer under a personal services

contract, a student intern, an employee employed in a seasonal position, or certain nonresident aliens.

(4) "Group" means a minimum of five employees employed by the same agency and identified as having common characteristics for the purposes of conducting a VEBA election vote employer and formed pursuant to ARM 2.21.1937.

(5) "HRA" means a health reimbursement account. ~~This is a tax-exempt account established for the payment of~~ to pay qualified health care expenses through employer contributions and investment earnings. The funds ~~may~~ must be accessed ~~only used~~ for the payment of qualified health care expenses, defined to include medical plan premiums, qualified health care expenses until the funds have been are exhausted.

(6) "Member" means an employee whose work unit voted to establish a group.

(7) "Participant" means a member who separates from service, and for whom an account is established in the Montana VEBA HRA.

(8) "Qualified health care expenses" means expenses for a participant or the participant's dependent for medical care, as defined by section 213(d) of the Internal Revenue Code, 26 USC 213(d), as amended. Examples of qualified health care expenses are prescription drug costs, hospital and physician charges, and health insurance premiums.

~~(6)(9)~~ "Separation from service" or "Separate from service" means the employee retires or otherwise ~~has a termination of~~ terminates employment and includes a voluntary or involuntary separation from service. The separation from service must be a separation from the employer. If the separation is a transfer to another agency or within the same public entity, ~~VEBA, plan~~ eligibility is based on the employee's position in the new group and its VEBA the group criteria. If the separation is a transfer to another agency or public entity without a Montana VEBA plan HRA group, the employee ~~would receive~~ receives any remaining leave as provided by the employer's leave policy.

~~(7) "VEBA participant" means a former employee for whom employer deposits have been received by the Montana VEBA HRA and whose account has a positive balance.~~

AUTH: 2-18-1305, MCA

IMP: ~~2-18-1302, 2-18-1303~~, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend this rule to update definitions for consistency with Title 2, chapter 18, part 13, MCA, and federal laws that apply to health reimbursement accounts.

The department proposes eliminating (1) because it duplicates the definition in 2-18-1303, MCA.

The department proposes adding a definition of "dependent" to explain the dependents of the participant who would be eligible for reimbursement of their qualified medical expenses and to address the revised definition of dependent in the PPACA. A qualifying dependent under the PPACA includes a dependent who has not, as of the end of the participant's taxable year, attained age 27. A participant may request reimbursement for the qualified health care expenses of a dependent

child for the entire calendar year in which the child turns 26 years of age. Before the PPACA, a qualifying dependent included children up to age 19 or age 24 if enrolled in college. In 2015, the United States Supreme Court legalized same-sex marriage in Obergefell v. Hodges. The department proposes including a description of a spouse to eliminate confusion regarding the eligibility of a same-sex spouse because the spouse of a legal same-sex marriage is a dependent eligible for tax-favored treatment of health care benefits.

New (6) and (7) add definitions for member and participant. The department proposes these changes to differentiate between the rights of an active employee who votes annually with other group members to make changes to a group from the rights of a former employee who completes the enrollment process to become a participant. The department took this approach because in educational presentations throughout state government and for cities, counties, K-12 schools, and the Montana University System, employees have been confused about who belongs to a group and who can access funds to pay for qualified medical expenses. This separation between member and participant will help employees understand the difference in an employee's status.

New (8) supplements the definition in 2-18-1303, MCA, with examples of qualifying medical expenses to help the reader understand the general types of expenses eligible for payment from Montana VEBA HRA funds. New (8) also adopts the definition of dependent to reduce confusion regarding which of the participant's dependents may be eligible.

The department proposes changes to existing (6) to describe a termination of employment. Because "termination" is not defined, the department receives questions from employers inquiring whether a termination includes both voluntary and involuntary terminations. U.S. Treasury guidance for IRC section 501(c)(9) VEBA trusts prohibits individual choice (further explained in the following paragraph), so the department believes a termination should not distinguish between voluntary and involuntary terminations of employment.

Individual choice can occur when an employee tries to change the outcome of a vote to fit the employee's personal situation. Individual choice occurs when an employee votes against the formation of a group and then attempts to disclaim status as a member of the group if the majority vote is to form the group. Individual choice also occurs when an employee wants to join an existing group from a department other than the department in which the employee works. An employee does not have the right to opt into or out of a group to satisfy individual need.

The remaining proposed changes are to improve readability and follow drafting convention.

The department proposes changing the implementing statute to 2-18-1303, MCA, because ARM 2.21.1932 references this statute for definitional terms and creates new definitions to supplement those found in 2-18-1303, MCA.

2.21.1933 MONTANA VEBA HRA ADMINISTRATION (1) The department shall:

(a) remains the same.

(b) ~~review and approve employer proposals for participation in the Montana VEBA HRA and determine whether the proposed group meets the definition of a group and whether the employer may~~ requests to become a contracting employer;

(c) evaluate, modify as necessary, and approve a contracting employer's proposal for group structure;

(c) remains the same but is renumbered (d).

~~(d)(e) enforce the group participation requirements in ARM 2.21.1937 and applicable nondiscrimination requirements in section 105(h) of the Internal Revenue Code, 26 USC 105(h) by not allowing discriminatory groups to form or to continue to exist by refusing to administer funds from groups that do not continue to comply with the department's requirements; and~~

~~(e) determine and process contributions as provided by the department in accordance with IRS tax law restrictions.~~

(f) establish a procedure to receive and deposit employer contributions consistent with this subchapter and applicable federal laws;

(g) establish claims adjudication procedures consistent with applicable laws;

(h) provide accounting and recordkeeping of all participant accounts;

(i) ensure the Montana VEBA HRA operates to preserve its tax-exempt status and that no part of the net earnings or trust assets inure to the benefit of any one participant, other than by payment of qualified health care expenses and reasonable administrative expenses; and

(j) determine investment vehicles available for participant account funds in the Montana VEBA HRA.

(2) Contracting employers ~~must~~ shall:

(a) remains the same.

(b) define groups and enroll eligible members ~~as provided in these rules;~~

(c) determine the ~~types~~ sources of employer contributions ~~to the HRA~~ available to a group. Allowable employer contributions sources may include sick leave cash-outs, ~~periodic employer contributions, group salary contributions, percent of raise contributions, unused employee benefit funds,~~ annual vacation leave cash-outs ~~as to the extent permitted by state statute, group merit pay, and longevity payments or other contributions~~ sources not prohibited by state statute;

~~(d) determine whether current employees can become~~ are members or whether an employee must terminate employment to become a member; and of an existing group and notify employees of any change in status;

(e) notify the Montana VEBA HRA when an employee becomes an employee hired into a plan-eligible position of the employee's change in status to a member;:

(f) notify the department when an employee becomes a member; and

(g) notify existing members 30 days before the group's anniversary date to vote.

~~(3) The department shall ensure that no part of the net earnings of the Montana HRA inures to the benefit of any private individual or shareholder, other than by payment of the allowable health care reimbursement expenses.~~

~~(4) A group shall operate in a manner prescribed by the department unless the association is disbanded in a manner prescribed by the department.~~

~~(5)(3) A contracting~~ An employer shall provide to the department, or the appropriate administering entity, the information necessary ~~for the plan's operation to~~

operate the plan and establish the employer as a contracting employer. The department, in partnership with a contracting employer, shall provide to ~~plan members~~ the employees the information necessary to actively participate in ~~the plan~~ a Montana VEBA HRA group.

~~(6)~~(4) The department may delegate all or a portion of its administrative duties in this rule to an administrator.

~~(7)~~(5) The ~~administrator~~ department shall exercise ~~all of its discretion~~ its administrative duties in a uniform, nondiscriminatory manner, ~~and shall have~~ having all necessary power and discretion to accomplish those purposes.

AUTH: 2-18-1305, MCA

IMP: ~~2-18-1302~~, 2-18-1309, MCA

STATEMENT OF REASONABLE NECESSITY: The amendment to (1)(b) and addition of new (1)(c) clarify the department's role in the process to add new contracting employers and approve the proposed group structure once an employer is a contracting employer. An employer must become a contracting employer before proposing group structures to meet the needs of its employees. Current (1)(b) combines the two steps and does not distinguish the sequential process of these two steps. The department believes current (1)(b) misleads the reader and that the proposed change will add clarity.

The department receives numerous questions regarding the references to nondiscrimination requirements in the rules (i.e., ARM 2.21.1933(1)(d) and 2.21.1937(4) and (5)). Federal law contains different nondiscrimination requirements for the different types of benefits. For example, a pension plan is subject to a nondiscrimination requirement different from that applicable to a self-funded medical plan. Because ARM 2.21.1933(1)(d) does not identify which requirement applies, ARM 2.21.1937(4) and (5) are being amended to reference the components of the correct requirement, including a reference to the correct nondiscrimination requirement will reduce confusion and ensure proper administration. The appropriate requirement is the rule for the underlying benefit itself – which is section 105(h) of the Internal Revenue Code, 26 USC 105(h), for self-funded medical plans like a health reimbursement arrangement.

The department proposes deleting (1)(e) and replacing with new (1)(f), (1)(g), and (1)(h) to clarify and expand upon the department's role in processing contributions. Processing contributions includes multiple steps beginning with receipt and deposit of the employer contribution, followed by the processing of participant reimbursement claims and ending with account recordkeeping for individual participants or auditing purposes. Without the proposed rule change, the department believes the department's role is unclear and subject to misinterpretation.

The department proposes new (1)(g) to explain the department's responsibility, in conjunction with its claim administrator, to provide a claim adjudication and appeal review procedure for participant claims. When these rules were initially adopted, claims review regulations had just been published. Since then, the PPACA added new claims requirements. After the PPACA became law,

the department and its claims administrator changed the administrative procedure for claims adjudication and response to appeals.

New (1)(h) adds the recordkeeping requirement in 26 CFR 1.501(c)(9)-5 for a voluntary employees' beneficiary association. The department believes current (1)(e) includes the recordkeeping requirement in the general statement of processing contributions, but without a specific mention of recordkeeping, the department believes the recordkeeping requirement could be overlooked.

The department proposes new (1)(i) to replace existing (3) and to consolidate administrative duties of the department under (1). Existing (3) states the prohibition against inurement to benefit any one individual or shareholder. The department proposes replacing the terms "shareholder" and "individual" with "participant" for consistency with other proposed rule changes. Additionally, public employers do not have shareholders nor is the term "individual" defined.

The department proposes new (1)(j) for the department's responsibility to determine investment options for participant account funds and to consolidate the department's administrative duties under (1). Current ARM 2.21.1931(2) contains the department's responsibility to determine investment vehicles, and is proposed to be removed.

The department proposes changes to current (2)(c) to eliminate contribution sources for active employees, including periodic employer contributions, group salary contributions, percent of raise contributions, unused employee benefit funds, group merit pay, and longevity pay. The PPACA created an exception for health plans covering retirees and other former employees from several new requirements (e.g., prohibition against a dollar cap on all benefit payments). As a result of the PPACA requirements, the department made the decision to formally remove active employees as an eligible class of participants in the Montana VEBA HRA.

The department proposes changes to current (2)(d), (2)(e), and (2)(f) to improve clarity and to add a requirement to notify employees of a change to their status as a member. The department receives inquiries from employees hired into Montana VEBA HRA eligible positions who seem unaware of their status as a group member until they terminate employment or retire from their new job position. The department believes the employer is in the best position to ensure these employees are notified of their status at time of hire and their right as an ongoing group member to vote on an annual basis.

The department proposes new (2)(g) to require the employer to notify group members 30 days in advance of the group anniversary date of their right to vote for a change in contribution sources and/or group structure, or to disband an existing group. Without this change, the rule does not appear to have a requirement to notify group members of the annual right to vote. The department receives questions from members who inquire when they can vote and if they will receive notice of that annual right to vote before the group's anniversary date. It is the department's belief that the employer is the appropriate entity to track this annual right to vote and notify the members of each group when they can vote.

The department proposes deleting (4) because it duplicates 2-18-1310(3), MCA, and potentially implies a different process from the process outlined in ARM 2.21.1937. The department believes ARM 2.21.1937 meets the department

obligations under 2-18-1304, MCA, to outline the steps necessary to form groups, change group structure, and disband groups.

A change is proposed to (6) to clarify that duties the department may delegate to an administrator are set forth in ARM 2.21.1933. This change is proposed in conjunction with the proposed changes to (7) to establish the department as the fiduciary and grant the power to the department to carry out the department's duties in ARM 2.21.1933. Previously, (7) granted those powers to the administrator. The administrator is not the fiduciary.

Additional amendments are to improve readability and follow drafting convention.

The department proposes changing the implementing statute to 2-18-1309, MCA, because ARM 2.21.1933 explains the department's duties relative to operating a health plan established as a tax-exempt trust. The current implementing statute, 2-18-1302, MCA, simply cites the legislature's purpose for establishing the program. ARM 2.21.1933 explains the duties undertaken by the department to ensure the Montana VEBA HRA operates in a manner that complies with federal 26 USC 501(c)(9) requirements.

2.21.1934 FEES (1) Contracting employers ~~shall~~ may not be charged a fee by the department to establish one or more groups.

(2) ~~VEBA p~~Participants may be required to pay monthly administration fees and shall pay a percentage of the monthly Montana VEBA HRA administration expenses as determined by the department. The fee begins when the contracting employer contribution is deposited into the participant account, ~~their accounts are established~~ and continues until the account has a zero balance.

AUTH: 2-18-1305, MCA

IMP: ~~2-18-1302~~, 2-18-1304, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to amend this rule to clarify the participant's responsibility for account fees and when fees will be assessed.

The change proposed to (1) is necessary to conform to drafting convention.

The department proposes changes to (2) to clarify when account fees are assessed. Current (2) starts fee assessment when the account is established. Instead, fees are assessed when the contribution from the contracting employer for a participant is deposited with the custodial bank trustee for the Montana VEBA HRA. The department proposes the change to (2) to reflect the current process.

The department proposes changing the implementing statute to 2-18-1304, MCA. Section 2-18-1304, MCA, grants authority to the department to determine how the administrative fees to operate the Montana VEBA HRA will be assessed and who will pay those fees, whereas 2-18-1302, MCA, simply cites the legislature's purpose for establishing the program. ARM 2.21.1934 describes administrative fees to operate the program and does not address the legislature's purpose in 2-18-1302, MCA.

2.21.1937 ELIGIBILITY (1) A group may be formed by:

(a) employees in an office, department, board, commission, attached to agency, county, incorporated city or town, school district, unit of the university system, and the judicial and legislative branches of state government;

(b) through (3) remain the same.

(4) No group may ~~discriminate in favor of highly compensated employees~~ and be formed ~~only for the~~ to benefit of a select group of the highest paid employees, ~~which "Highest paid" means an annual compensation in excess of \$80,000 and in the top 20%~~ "Highest paid" means an annual compensation in excess of \$80,000 and in the top 25% of employees ranked on the basis of total compensation paid during the year.

~~(5) Employees who may be excluded from participation without violating the nondiscrimination provisions described in (4) include:~~

~~(a) employees who are not:~~

~~(5) Members in a group must be:~~

~~(i) through (iii) remain the same but are renumbered (a) through (c).~~

~~(iv)(d) active in the employer's retirement system (retirement-eligible only groups);~~

~~(b) seasonal and less than half-time employees;~~

~~(c) employees covered by a collective bargaining agreement; and~~

~~(d) certain nonresident aliens.~~

~~(6) When a group has been is formed:~~

~~(a) members and VEBA participants may not opt out of the group;~~

~~(b) current employees or retirees of the same employer not already in the group may not opt into the group; and~~

(c) a participant may return to work but does not become a new member of a group unless hired into a job position eligible for the Montana VEBA HRA and meets all requirements in (5); and

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

AUTH: 2-18-1305, MCA

IMP: 2-18-1302, 2-18-1310, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes the change to (4) to update the nondiscrimination rule for a health reimbursement arrangement. Existing (4) states the incorrect nondiscrimination requirement. A self-funded health reimbursement arrangement is subject to the nondiscrimination rule under section 105(h) in the Internal Revenue Code. That rule defines a highly compensated employee as an employee in the top 25% of employees ranked by total compensation paid during the year. Compensation is wages only (includes bonuses and leave pay).

The department proposes changes to (5) to improve clarity for eligibility requirements. To become a member of a group, an employee must be eligible for sick leave and benefits from the employer, receive an employer contribution for group benefits (including those defined under 2-18-703, MCA), and be active in the employer's retirement system. Existing (5) lists categories of employees who can be excluded without violating the nondiscrimination rule. A health plan is generally considered non-discriminatory if benefits do not vary on the basis of an employee's years of service, compensation, or employee category (e.g., benefits only available

to management employees). Because the Montana VEBA HRA benefits and eligibility rules are the same for all employees, the department believes the Montana VEBA HRA is non-discriminatory in terms of its plan design and operation. Therefore, the department proposes removing existing (5)(b) through (d) and focusing the reader on the eligibility requirements under new (5)(a) through (d) to reduce confusion and misunderstanding.

The proposed change in (6)(a) excludes a VEBA participant from participating as a group member. As a result of the PPACA requirements, the Montana VEBA HRA was formally adopted as a separation-only (including retirement) plan and active employees were eliminated as an eligible class of participants. Consequently, a member of a group may only be an active employee.

The department proposes the change to (6)(b) for the same reason. A retiree's status is determined by the employee's position relative to the group at the time of retirement. If the retiree was not a member of a group at the time of retirement, the retiree cannot opt into a group.

New (6)(c) addresses the case of a participant who returns to work for the same or a different public employer. This participant becomes a member of a group again if hired into a position eligible for the Montana VEBA HRA and all eligibility criteria in (5) are satisfied. For example, consider a state retiree who returns to work in a Montana VEBA HRA eligible position for more than 960 hours per year. The retiree is again eligible for benefits, must contribute to the state retirement system, and is, therefore, a member of the group and eligible to vote.

Additional amendments are to improve readability and follow drafting convention.

The department proposes changing the implementing statute to 2-18-1310, MCA. Section 2-18-1310, MCA, grants authority to the department to determine a process for the formation and disbanding of groups of employees, whereas 2-18-1302, MCA, simply cites the legislature's purpose for establishing the program. ARM 2.21.1937 explains the different options for employees to consider when forming a group, after the employer becomes a contracting employer. ARM 2.21.1937 does not provide additional clarification of the legislature's purpose in 2-18-1302, MCA.

2.21.1938 ELECTIONS ~~(1) For the purposes of election and administration of the Montana VEBA HRA, an employer may form subunits.~~

~~(2)(1)~~ (1) An employer may ~~either~~ initiate or facilitate an election ~~to determine whether for~~ employees will to vote to form a new group ~~to participate~~ in the Montana VEBA HRA. ~~When~~ However, if at least 25% of the employees request an election, an employer ~~must~~ shall facilitate the election within 60 calendar days from the date of the request. Employers shall notify employees of ~~an impending a~~ vote at least 15 days prior to the date first day of the vote commences voting period.

~~(3) The election may include all the employer's employees or a specified group of employees to determine whether those employees will form a group.~~

~~(4)(2)~~ (2) ~~The contribution source(s) must be agreed upon before a vote is conducted. The group may be polled in a manner acceptable to the group~~ Employees shall determine the contribution sources before a vote is conducted. If the employees cannot decide on the contribution sources, the employer may

conduct a straw poll to determine contribution sources. The employer shall allow all employees eligible to vote a reasonable amount of time to submit their choice for contribution sources. Once a majority agrees upon the contribution source(s), the contribution source(s) must be listed on the ballot. If a majority cannot agree on contribution sources for an existing group, the existing group structure and contribution sources remain in place. If a majority cannot agree on proposed contribution sources for a new group, the group does not form.

~~(5)~~(3) Employees who are members of a collective bargaining unit may decide to either participate with other employees in the formation of a group or to initiate the election through the bargaining unit. If the employees of a collective bargaining unit decide to participate with other noncollectively bargained employees, a the employer shall obtain written memorandum of understanding agreement from the union representing the bargaining unit employees ~~must be obtained by the employer.~~

~~(6)~~(4) Employers ~~must shall~~ make a reasonable effort when conducting an election to maintain the privacy of each individual ballot. Employers ~~also must include provisions for~~ shall permit absentee voting for these employees not present during an election.

~~(7)~~(5) If ~~a the~~ majority of the employees vote to ~~become members~~ establish a group or change an existing group, then all employees eligible to vote, any employees who later become eligible, and any eligible employees subsequently hired into positions eligible for the Montana VEBA HRA ~~the positions covered under the terms and conditions of the election, must be formed as a group and the employees must become members of the group.~~ If the majority of the employees vote to become members, employees who voted not to participate in the group are ~~still included in~~ establish a group or change an existing group, and any eligible employees who did not return a ballot, become members of the group and may not opt out of the group.

(6) If at least 25% of the members of the group request an annual election, members of a group shall hold a vote to:

- (a) continue as an active group with the same contribution sources;
- (b) continue as an active group with different contribution sources; or
- (c) disband the group.

~~(8) Members of a group may hold an annual election to determine whether or not they will continue their participation in the Montana VEBA HRA if at least 25% of the members of the group requests an election.~~

~~(a) If a majority of members elect to discontinue their participation, their group is disbanded until another election is conducted; however, the members are not required to wait 12 months from the date of the election to form another group.~~

~~(b) Once a group disbands, an employer shall not make further contributions to VEBA participants' accounts. However, distributions from existing VEBA participants' accounts will continue until the funds in the accounts are exhausted.~~

~~(c) Once an election is conducted, and a positive vote is cast by a majority, an employer may not conduct another election for that group for 12 months from the date of the election.~~

(7) If members vote to disband the group, employees are not required to wait 12 months to form another group.

(8) If members vote to continue as an active group with the same or different contribution sources, an employer may not conduct another election for that group until 12 months from the date of the election.

(9) The effective date of the vote group must be no later than 30 days following is the first day of the pay period/cycle immediately following the closing day of the voting period. The voting period for an existing group must conclude no later than the day before the anniversary date of the group. The employer shall announce the results of the vote to the employees or members of the group, as applicable, at the completion of the vote and announcement of the election outcome which creates the group.

(10) If no group members or an insufficient number of group members request an annual election by the end of the 30-day notice period immediately prior to the anniversary date of the group, the group's existing structure and contribution sources continue without modification for 12 months.

AUTH: 2-18-1305, MCA

IMP: 2-18-1310, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes deletion of (1) because it is replaced by a description of the employer's role in group formation in ARM 2.21.1933.

The department proposes elimination of (3) because it is misleading and an incomplete statement of the composition of a group. The reader is referred to ARM 2.21.1937 for an explanation of group composition.

Proposed changes to existing (4) are necessary to clarify who does the polling and what method can be used to poll employees to determine contribution sources. Existing (4) does not identify either who does the polling or what method can be used. The current practice for employers is to conduct a straw poll of members or potential members of contribution source options if those members or potential members cannot come to an agreement on the contribution source. If the straw poll does not yield a majority vote, contribution sources continue without change for an existing group – or the group does not form if employees are voting to form a new group. Proposed changes to existing (4) explains the consequences if the straw poll does not yield a majority vote. Existing (4) does not state which employees can choose contribution sources, so the department proposes change to clarify that employees eligible to choose contribution sources are the same employees who can vote in the annual election. Existing (4) does not state how much time employees have to vote on contribution sources, so the department proposes the standard of a reasonable amount of time to allow the employer flexibility to accommodate varying sizes and geographic distribution of groups.

Proposed changes to existing (7) clarify the consequences of a vote. The department receives numerous questions from eligible employees who either did not vote or voted against establishing a group and, as a result, they believe they opted out of the group. Converting accrued leave into a tax-favored contribution to the Montana VEBA HRA for payment of future medical expenses requires that an employee have no control or choice over when income is included in gross income. If the employee has the right to assign future income – which is individual choice –

all accrued leave is 100% taxable to the employee. Because this prohibition against individual choice is not easily understood, the department proposes changes to existing (7) to add clarity.

The department proposes replacing (8) with new (6), (7), and (8) to simplify the voting options of a group and the relevant time frames for the next vote. The department receives enough questions from group members and employers on the annual voting process that the department believes additional clarification in the rule for the voting process would help employers manage this process and minimize employee questions.

The department proposes eliminating (8)(b) because active employees are no longer an eligible class of participants in the Montana VEBA HRA. Employer contributions are made at the time of a separation from service, including retirement, and not when a member is an active employee. Once a member becomes a participant, the participant is no longer a group member and is unaffected by the future election choices of a group.

Proposed changes to (9) add an effective date for a new group or a change to an existing group. Existing (9) contains a general rule that the effective date is a day occurring during a 30-day period following the end of a voting period. Employers typically schedule a voting period to end the day before the group's annual anniversary date to give members an opportunity to change group structure or contribution sources, to continue the existing group structure and contribution sources, or to disband the group. The 30-day period in existing (9) is not connected to the employer's pay period/cycle and could potentially extend through two pay periods of a biweekly pay period employer. Therefore, the department proposes replacing the 30-day period with a specific date of the first day of the employer's pay period following the end of the voting period. Additionally, existing (9) does not define when the voting period for an existing group ends, so the department proposes the day immediately before the group's anniversary date. Employers have questioned when a vote is effective and what the outcome is when voting concludes after a group's anniversary date. The department believes establishing a specific effective date and the ending date for the voting period of an existing group will ensure consistent treatment of voting results and reduce confusion over when the adopted change becomes effective.

In addition, the department believes it is necessary to clarify the entity responsible to notify employees or members, as applicable, of the outcome of the vote. The current rule references an announcement of the vote outcome but does not assign the responsibility for that announcement to any entity. The department believes the employer is in the best position to announce the outcome because the employer has regular communication with its employees on other employment-related matters and can notify employees of the vote outcome through email or other methods used to notify employees of other employment matters.

The department proposes new (10) to state the outcome if no members or an insufficient number of members in a group (fewer than 25%) request an annual election, even though the employer gave these members a 30-day notice of their right to hold an annual election. The existing rule assumes an annual vote will occur but does not state a preference for an annual vote or explain the outcome when members of a group fail to request an annual vote. The department believes new

(10) will reduce confusion on the outcome when employees do not request an annual vote.

Additional amendments are to improve readability and follow drafting convention.

2.21.1939 PARTICIPATION (1) ~~Subject to the limitations of this rule and the eligibility provisions of employer policies and applicable collective bargaining unit agreements, an employee becomes a~~ A member is a participant of the Montana VEBA HRA at the time of ~~proper completion of an~~ the member separates from service, submits a signed and completed enrollment form and the first employer deposit to the member's to the department or administrator, as applicable, and the contracting employer makes a contribution to the participant's account.

(2) If a member dies as an active employee, all accrued leave benefits must be paid as taxable income. The member is not a participant.

~~(2)(3)~~ Each member is entitled to participant may direct the investment of funds in the ~~member's~~ participant's account among the investment vehicles offered. The department shall ~~provide for~~ identify a default investment vehicle ~~if a member fails to direct how funds are to be invested for a participant who fails to select an investment vehicle.~~

~~(3)(4)~~ Members Participants may make investment changes on a monthly basis.

(5) A participant account closes when the balance of the account is zero.

AUTH: 2-18-1305, MCA

IMP: ~~2-18-1302~~, 2-18-1304, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to amend this rule to remove reference to active employees as an eligible class to participate in the Montana VEBA HRA to comply with the PPACA requirements. The department proposes change to the term "member" and the term "participant" to distinguish between a member (an active employee in an existing group) and a participant (a former employee with an established account) to address confusion over the difference in employee status and who has authority over an established account.

The department proposes removing the reference in (1) to the employee eligibility requirement in employer policies and collective bargaining agreements because these documents are only relevant to active employees and do not apply to retirees or other former employees. The department proposes changing the term "employee" to "member" and adding a reference to separation from service as a procedural step in the process to set up an account. During educational calls and presentations with retiring employees, retiring employees seem confused as to when a member becomes a participant. Listing the procedural steps to become a participant makes that process less confusing to retiring employees.

The department receives questions from employers on how the Montana Voluntary Employees' Beneficiary Association Act applies to an employee's death, so new (2) is proposed to explain the treatment of accrued leave balances when a member dies as an active employee. For employment terminations other than death (e.g., retirement), a member's completion of an enrollment form is the first step for a

member to become a participant. If a member dies before completing an enrollment form, that member does not become a participant. Under 26 CFR Section 1.101-2(a)(2), employee death benefits, whether from unused annual vacation leave or unused sick leave, are 100% taxable income. Unused leave benefits paid as a death benefit cannot be held tax-exempt in the Montana VEBA HRA.

The proposed changes to current (2) and (3) are necessary to identify the participant, not the member, as the individual directing investment of the funds in a participant account.

The department proposes (5) to clarify when a participant account closes. Accounts are closed when the account balance is zero. Adding a reference to the point when an account closes formalizes the date used in the reconciliation process for the annual audit of the Montana VEBA HRA under IRC section 501(c)(9). The audit process randomly selects accounts and reconciles funds held by the custodial trustee for those accounts to the accounting summary prepared by the administrator.

The department proposes changing the implementing statute to 2-18-1304, MCA. Section 2-18-1304, MCA, grants authority to the department to establish a process for a member to become a participant in the Montana VEBA HRA and choose the investment funds a participant may select for his or her account funds, whereas 2-18-1302, MCA, simply cites the legislature's purpose for establishing the program. ARM 2.21.1939 adds clarification to the enrollment process to become a participant and describes a participant's options for investing his or her account funds. ARM 2.21.1939 does not address the legislature's purpose in 2-18-1302, MCA.

2.21.1940 CONTRIBUTIONS (1) Employer contributions into an account, the accumulation of interest or other earnings in an account, and payments from an account for qualified health care expenses are tax-exempt, as provided in 15-30-2110, MCA, and under applicable federal laws and regulations to the extent that the plan ~~is qualified~~ meets requirements under applicable sections of the Internal Revenue Code.

~~(2) Each employer shall make deposits to the VEBA health benefit plan on behalf of its eligible members pursuant to the terms of collective bargaining agreements or employer policies. Employer deposits shall be specifically allocated to each participating member's account.~~

~~(3) Each participating employer shall provide for a member to annually designate how many hours (if any) of the member's annual vacation leave balance in excess of 240 hours and/or sick leave will be automatically converted to an employer contribution to the member's account each pay period, as provided in 2-18-1311, MCA. The state's VEBA plan does not allow contributions of leave prior to separation from service.~~

(2) Each contracting employer shall make contributions to the Montana VEBA HRA for participants. The department or its administrator, as applicable, shall establish an account for each participant.

~~(4)(3) Sick leave is considered a contribution source, as if approved by a vote of the voting entity group, and may be converted convert tax-free for the purposes of as a contribution. The sick leave contribution rate of sick leave is 25% of the employee's member's balance at the time of separation from service. As agreed~~

upon by the ~~voting entity group~~, the sick leave balance of 25% may be divided as defined ~~listed~~ by the department between a Montana VEBA HRA contribution and taxable cash.

~~(5) Each participating employer may establish a maximum amount of sick leave hours that may be automatically converted to an annual contribution. An employer may establish the maximum annual hours at "0" until an employee separates from service.~~

~~(6)~~(4) Annual vacation leave is ~~considered~~ a contribution source, as if approved by a vote of the voting entity group, and may ~~be converted~~ convert tax-free ~~for the purposes of~~ as a contribution. The annual vacation leave rate of annual vacation leave is 100% of the ~~employee's~~ member's balance at the time of separation from service.

~~(7)~~(5) Other contributions ~~shall~~ may be allowed as ~~outlined in~~ permitted by statute and federal law, but may not be discriminatory in favoring highly compensated employees. ~~The~~ All members of a group must ~~all~~ participate in any form of approved contributions.

AUTH: 2-18-1305, MCA

IMP: 2-18-1311, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to amend this rule to eliminate the reference to contribution sources for active employees. Active employees as an eligible class of participants in the Montana VEBA HRA were eliminated in 2013 when the PPACA requirements necessitated the change. The reader is referred to the General Statement of Reasonable Necessity for an explanation of the PPACA requirements and their application to the Montana VEBA HRA. Retirees over 65 are enrolled in Medicare and potentially a Medicare supplement plan instead of employer-sponsored medical coverage and typically use Montana VEBA HRA funds to cover the costs of Medicare premiums and supplement policies. Limiting reimbursement to dental and vision claims is necessary for participants who terminated employment for a reason other than retirement and either want subsidized Exchange coverage or who may return to work for the employer.

The department proposes deleting (2) and (3) because these sections outline the employer's obligation to active employees. When the PPACA requirements necessitated adopting the Montana VEBA HRA as a separation-only plan in 2013, active employees were eliminated as an eligible class of participants in the Montana VEBA HRA and contributions for active employees ceased. Current (2) and (3) describe contribution options that are impermissible under the PPACA. The department proposes deleting current (2) and (3) to avoid an employer making the erroneous assumption these contributions are permissible.

New proposed (2) replaces old (2) and (3) and adds the employer obligation to make contributions to the Montana VEBA HRA for participants.

The department proposes deleting (5) because the automatic conversion of sick leave applies to active employees. Active employees are not eligible to participate in the Montana VEBA HRA.

Additional amendments are to improve readability and follow drafting convention.

2.21.1941 BENEFITS IN THE EVENT OF DEATH (1) ~~A member may designate a spouse and/or qualified dependent(s) in a manner prescribed by the department.~~

~~(2)(1) Upon a VEBA participant's death, if the deceased VEBA participant's account has a positive account balance, the VEBA-participant's surviving spouse, if any, may file claims for qualified health care expenses incurred by the participant up until death, the surviving spouse, and other tax-qualified dependents and/or qualified dependent(s) are eligible to use the account for qualified health care expenses.~~

~~(3)(2) If a deceased VEBA participant's account has a positive account balance, the VEBA participant's and the participant dies without a surviving spouse, if any, but with other tax-qualified dependents, the dependents (or guardian) may file claims for eligible qualified medical benefits incurred by the VEBA participant, the surviving spouse, and any other qualified health care expenses of those dependents.~~

~~(4) If a deceased VEBA participant's account has a positive account balance and dies without a surviving spouse but with qualified dependent(s), the guardian(s) of the dependent(s) may file claims for eligible medical benefits on the dependent(s)' behalf.~~

~~(3) If the participant dies with no surviving spouse or other tax-qualified dependents, or if the last surviving tax-qualified dependent of the deceased participant dies, or when all surviving dependents of the deceased participant lose tax-qualified status, then the executor or administrator of the deceased participant's estate may file claims for qualified health care expenses incurred by the deceased participant or tax-qualified dependent up to date of death or loss of tax-qualified status. If there are no qualified health care expenses to reimburse, the remaining account balance must be allocated on a per capita basis to all participant accounts (e.g., remaining account balance of \$2,500 for 1,000 participants equals \$2.50 per participant on a per capita basis).~~

~~(5) At the death of the VEBA participant who has no surviving spouse or qualified dependents, or when the last to die of the VEBA participant and their qualified dependents eligible for medical benefits under the plan dies or is no longer described in IRC 152(a), then the executor or administrator of that person's estate may file claims for any eligible expenses incurred by that person, after which the remaining account balance shall be reallocated on a per capita basis to all Montana VEBA HRA member accounts.~~

~~(6)(4) If any VEBA-participant's account has been is unclaimed for a period of at least 35 months since the whereabouts or continued existence of the person entitled to the account was were last known to the administrator, the VEBA participant's account shall becomes the property of the Montana VEBA HRA. Unclaimed account funds must be allocated on a per capita basis to all participant accounts (e.g., remaining account balance of \$2,500 for 1,000 participants equals \$2.50 per participant on a per capita basis).~~

AUTH: 2-18-1305, MCA

IMP: 2-18-1313, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes deleting (1) to remove the reference to a member's right to designate individuals to receive account funds. In the initial application for tax-exempt status of the Montana VEBA HRA, the department requested the right of a member to designate a beneficiary. The IRS declined to grant the department's request. Therefore, using account funds for qualifying health care expenses is limited to the expenses incurred by the deceased participant up until time of death and any tax-qualified dependents, including a spouse. The department believes that current (1) appears to create a right of a member or participant to designate beneficiaries, even if those individuals are not tax-qualified dependents, such as a child over the age of 26 or a non-tax dependent relative. The department proposes deleting (1) to avoid misleading the reader.

As currently numbered, (3) duplicates the intent of (2), so the department proposes the change to describe how account funds may be used if a participant dies without a surviving spouse but with other tax-qualified dependents.

The department proposes deletion of (4) since the intent is now part of the department's proposed change to current (3).

Additional amendments are to improve readability and follow drafting convention.

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 Terri Hogan, JD, MBA, Department of Administration, P.O. Box 200130, Helena, Montana 59620-0130; telephone (406) 444-3447; fax (406) 444-0080; or e-mail terri.hogan@mt.gov, and must be received no later than 5:00 p.m., September 20, 2019.

6. Terri Hogan, Department of Administration, 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 mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding Voluntary Employees' Beneficiary Association rulemaking actions. 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. An electronic copy of this proposal notice is available through the department's website at <http://doa.mt.gov/administrativerules>. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the

official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

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

10. The department has determined that under 2-4-111, MCA, the proposed amendment will not significantly and directly affect small businesses.

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 August 13, 2019.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the adoption of New Rule I and the amendment of ARM 6.6.3501, 6.6.3515, and 6.6.3520,	)	NOTICE OF PROPOSED
pertaining to Annual Audited Reports and Establishing Accounting Practices and Procedures to Be Used in Annual Statements, and Internal Audit Function Requirements	)	ADOPTION AND AMENDMENT
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

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

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m. on September 3, 2019, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

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

NEW RULE I INTERNAL AUDIT FUNCTION REQUIREMENTS (1) An insurer is exempt from the requirements of this rule if:

(a) the insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and

(b) if the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000.

(2) An insurer or group of insurers exempt from the requirements of this rule is encouraged, but not required, to conduct a review of the insurer business type, sources of capital, and other risk factors to determine whether an internal audit function is warranted. The potential benefits of an internal audit function should be assessed and compared against the estimated costs.

(3) The insurer or group of insurers shall establish an Internal audit function providing independent, objective, and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management, and internal controls. This assurance shall be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed

necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

(4) In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others, and shall appoint an individual to head the Internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

(5) The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

(6) If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this rule at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

REASON: The Commissioner of Securities and Insurance - Office of the State Auditor, Matthew M. Rosendale, (commissioner) is the statewide elected official responsible for administering the Montana Insurance Department and regulating insurers. The commissioner is a member of the National Association of Insurance Commissioners (NAIC). The NAIC is an organization of insurance regulators from the 50 states, the District of Columbia, and the five U.S. territories. The NAIC provides a forum for the development of uniform national policy and regulation when uniformity is appropriate. Insurer solvency and financial reporting is a principal area in which uniformity is efficient and effective for insurers and regulators. Multi-state insurers are able to use the same financial reporting in all jurisdictions and avoid the additional expense of tailoring their financial reporting to different requirements in each jurisdiction. Regulators across jurisdictions are able to have the same understanding of the financial reporting and terminology which aids them in monitoring the financial condition of insurers to protect insurance consumers. The NAIC has promulgated model regulations regarding financial reporting for insurers which promote national uniformity and also increase the transparency and reliability of the financial reporting. The commissioner is proposing to amend existing administrative rules, adding internal audit function requirements for insurers with total annual premiums of greater than \$500,000,000 (and for a group of insurers, greater than 1,000,000,000). There are no domestic insurers operating in Montana that would have to comply with this new rule at the present time. This rule is based on the NAIC Annual Financial Reporting Model Regulation 205, amended in 2014.

The NAIC Accreditation Program provides a process to monitor and regulate solvency of multi-state insurers. To be accredited, each jurisdiction must demonstrate adequate solvency laws and regulation to protect consumers and

guarantee funds, and also effective and efficient financial analysis and examination processes. All the proposed rule changes are consistent with the NAIC Model Regulation 205, and necessary to maintain the agency's accreditation through the NAIC Financial Regulation Standards and Accreditation Program.

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

6.6.3501 DEFINITIONS For the purposes of this subchapter, the following terms shall have the following meanings:

(1) "Accountant" and "independent certified public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA), and in all states in which they are licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

(2) An "affiliate" of, or person "affiliated" with a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Audit committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer, or group of insurers, the internal audit function of an insurer or group of insurers (if applicable), and external audits of financial statements of the insurer, or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this regulation at the election of the controlling person. Refer to ARM 6.6.3515(6) for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

(4) "Audited financial report" means and includes those items specified in ARM 6.6.3504.

(5) "Indemnification" means an agreement of indemnity, or a release from liability, where the intent or effect is to shift, or limit, in any manner the potential liability of the person, or firm, for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer, or its representatives.

(6) "Independent board member" has the same meaning as described in ARM 6.6.3515(4).

(7) "Insurer" means an insurer as defined in 33-1-201 and 33-2-1501, MCA, or an authorized insurer as defined in 33-1-201, MCA.

(8) "Group of insurers" means those licensed insurers included in the reporting requirements of 33-2-1101, MCA, et seq., or a subset of such insurers as identified by management for the purpose of assessing the effectiveness of internal controls over financial reporting.

(9) "Internal audit function" means a person or persons that provide independent, objective, and reasonable assurance designed to add value and improve an organization's operations and accomplish its objectives by bringing a

systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

~~(9)~~ (10) "Internal control over financial reporting" means a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in ARM 6.6.3504(2)(b) through 6.6.3504(3), and includes those policies and procedures that:

(a) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in ARM 6.6.3504(2)(b) through 6.6.3504(3), and that receipts and expenditures are being made only in accordance with authorizations of management, and directors; and

(c) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in ARM 6.6.3504(2)(b) through 6.6.3504(3).

~~(10)~~ (11) "SEC" means the United States Securities and Exchange Commission.

~~(11)~~ (12) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

~~(12)~~ (13) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC, and the related attestation report of the independent certified public accountant as described in ARM 6.6.3501.

~~(13)~~ (14) "SOX compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(a) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934);

(b) the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and

(c) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

6.6.3515 REQUIREMENTS FOR AUDIT COMMITTEES (1) This rule shall not apply to foreign or alien insurers licensed in this state, an insurer that is a SOX compliant entity, or an insurer that is a direct or indirect wholly-owned subsidiary of a SOX compliant entity.

(2) The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the audited financial report or

related work pursuant to this subchapter. Each accountant shall report directly to the audit committee.

(3) The audit committee of an insurer or group of insurers shall be responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by [NEW RULE I].

~~(3)~~ (4) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to ARM 6.6.3501(3) and 6.6.3515~~(6)~~ (7).

(4) (5) In order to be considered independent for purposes of this rule, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliated person of the entity, or any subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail, and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer, or employee of the insurer, or one of its affiliates.

~~(5)~~ (6) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity, or one year from the occurrence of the event that caused the member to be no longer independent.

~~(6)~~ (7) To exercise the election of the controlling person to designate the audit committee for purposes of this subchapter, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and shall include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

~~(7)~~ (8) The audit committee shall require the accountant that performs for an insurer any audit required by this subchapter to timely report to the audit committee in accordance with the requirements of SAS 61, Communication with Audit Committees, or its replacement, including:

- (a) all significant accounting policies and material permitted practices;
- (b) all material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
- (c) other material written communications between the accountant and the management of the insurer, such as any management letter, or schedule of unadjusted differences.

~~(8)~~ (9) If an insurer is a member of an insurance holding company system, the reports required by ~~(7)~~ (8) may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any

substantial differences among insurers in the system are identified to the audit committee.

(9) (10) The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums. See Note C.		
\$0 - \$300,000,000	Over \$300,000,000 - \$500,000,000	Over \$500,000,000
No minimum requirements. See also Note A and B.	Majority (50% or more) of members shall be independent. See also Note A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

Note A: The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(40) (11) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000 may make application to the commissioner for a waiver from the ARM 6.6.3515 requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from ARM 6.6.3515 with the states that it is licensed in, doing business in, and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

6.6.3520 EXEMPTIONS AND EFFECTIVE DATES (1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of these rules if the commissioner finds, upon review of the application, that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption, such insurer may make a written request for a hearing on its application for an exemption. Such hearing shall be held in accordance with 33-1-701, MCA.

(2) Domestic insurers retaining certified public accountants on the effective date of this rule who qualify as independent shall comply with these rules for the year ending December 31, 2009, and each year thereafter unless the commissioner permits otherwise.

(3) Domestic insurers not retaining certified public accountants on the effective date of these rules who qualify as independent may meet the following schedule for compliance, unless the commissioner permits otherwise.

(a) as of December 31, 2009, file with the commissioner an audited financial report.

(b) for the year ending December 31, 2010, and each year thereafter, such insurers shall file with the commissioner all reports and communications required by these rules.

(4) Foreign insurers shall comply with these rules for the year ending December 31, 2009, and each year thereafter, unless the commissioner permits otherwise.

(5) The requirements of ARM 6.6.3506(4) shall be in effect for audits of the year beginning January 1, 2010, and thereafter.

(6) The requirements of ARM 6.6.3515 are to be in effect January 1, 2010. An insurer, or group of insurers, that is not required to have independent audit committee members, or only a majority of independent audit committee members (as opposed to a supermajority), because the total written and assumed premium is below the threshold, and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date.

(7) The requirements of ARM 6.6.3517 and ARM 6.6.3510 are effective beginning with the reporting period ending December 31, 2010, and each year thereafter. An insurer, or group of insurers, that is not required to file a report because the total written premium is below the threshold, and subsequently becomes subject to the reporting requirements, shall have two years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

(8) If an insurer or group of insurers that is exempt from [NEW RULE I] requirements no longer qualifies for that exemption, it shall have one year after the year the threshold is exceeded to comply with the requirements of [NEW RULE I].

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-1-701, 33-2-1517, 33-4-313, 33-5-413, MCA

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Ivan C. Evilsizer, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-1295; fax (406) 444-3497; or

e-mail chuck.evilsizer@mt.gov, and must be received no later than 5:00 p.m., September 20, 2019.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Ivan C. Evilsizer at the above address no later than 5:00 p.m., September 20, 2019.

7. 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: not applicable, since no insurers in Montana are directly affected at the present time.

8. The CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may sign up by clicking on the blue button on the CSI's website at: <http://csimt.gov/laws-rules/> and may specify the subject matter they are interested in. Notices will be sent by e-mail unless a mailing preference is noted in the request. Request may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

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 office has determined that the adoption and amendment of the above-referenced rules will have no significant impact on small businesses.

/s/ Ivan C. Evilsizer
Ivan C. Evilsizer
Rule Reviewer

/s/ Michelle Dietrich
Michelle Dietrich
Chief Legal Counsel

Certified to the Secretary of State August 13, 2019.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 6.6.4603 pertaining to the	)	AMENDMENT
Notice of Protection Provided by the)	
Montana Life and Health Insurance	)	NO PUBLIC HEARING
Guaranty Association	)	CONTEMPLATED

TO: All Concerned Persons

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

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m. on September 3, 2019, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

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

6.6.4603 APPENDIX "A" - FORM AND CONTENT OF NOTICE (1) The form and content of the summary notice and disclosure document adopted in ARM 6.6.4601, and referred to as "Appendix A" are as follows:

(a) **NOTICE OF
PROTECTION PROVIDED BY
MONTANA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION**

This notice provides a **brief summary** of the Montana Life and Health Insurance Guaranty Association (the Association) and the protection it provides for policyholders. ~~This safety net was created under Montana law, which determines who and what is covered and the amounts of coverage.~~

The Association was established under Montana law to provide protection in the unlikely event that a your life, annuity or health insurance issuer company becomes financially unable to meet its obligations and is ~~taken over by its Insurance Department~~ placed into liquidation. If this should happen, the Association will typically arrange to continue coverage and pay claims, in accordance with Montana law, with funding from assessments paid by other insurance companies.

In the event a company is placed into liquidation, benefits provided by the Association are payable according to the insurance policy or certificate, and subject to the following maximum limits:

- ~~The basic protections provided by the Association are:~~ Life Insurance - \$300,000 in death benefits, but limited to \$100,000 in cash surrender and net cash withdrawal values.
~~–\$100,000 in cash surrender or withdrawal values~~
- Health Insurance
 - ~~\$500,000 in hospital, medical and surgical insurance benefits~~ health insurance benefits
 - \$300,000 in disability income insurance benefits
 - \$300,000 in long-term care insurance benefits
 - \$100,000 in other types of health insurance benefits
- Annuities
- \$250,000 in withdrawal and cash values present value, including net cash surrender and net cash withdrawal values

The maximum amount of protection is \$300,000 in benefits with respect to any one life regardless of the number of policies or contracts, except with respect to ~~hospital, medical and surgical insurance benefits~~ the \$500,000 maximum in health insurance benefits but not including disability, long term care or other types of health insurance benefits.

Note: Other restrictions to coverage apply. Certain policies and contracts may not be covered or fully covered. For example, coverage does not extend to any portion(s) of a policy or contract that the insurer does not guarantee, such as certain investment additions to the account value of a variable life insurance policy or a variable annuity contract. There are also various residency requirements and other limitations under Montana law.

To learn more about the above protections, as well as protections relating to group contracts or retirement plans, please visit the Association's web site at www.mtlifega.org or contact:

Montana Life and Health Insurance Guaranty Association PO Box 8247 Missoula, MT 59807 877-678-1048 or administrator@mtlifega.org	Office of the Montana State Auditor Commissioner of Securities and Insurance 840 Helena Ave. Helena, MT 59601 406-444-2040
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IF YOUR INSURANCE COMPANY IS IN GOOD STANDING AND NOT IN LIQUIDATION, PLEASE DIRECT QUESTIONS ABOUT YOUR POLICY TO YOUR INSURANCE COMPANY!

Insurance companies and agents are not allowed by Montana law to use the existence of the Association or its coverage to encourage you to purchase any form of insurance. When selecting an insurance company, you should not rely on Association coverage.

If there is any inconsistency between this notice and Montana law, then Montana law will control.

AUTH: 33-1-313, 33-10-210, MCA
IMP: 33-10-210, MCA

Reason: The Commissioner of Securities and Insurance - Office of the State Auditor, Matthew M. Rosendale, (commissioner) is the statewide elected official responsible for administering the Montana Insurance Department and regulating insurers. Title 33, MCA, provides for the creation and administration of the Montana Life and Health Insurance Guaranty Association; Mont. Code Ann. Section 33-10-201, et. seq. The proposed amendments to ARM 6.6.4603 are necessary to conform to changes in Montana law, 33-10-202, MCA, as amended by 2019 Montana House Bill 64 (effective January 1, 2020), and to make other editing changes.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Ivan C. Evilsizer, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-1295; fax (406) 444-3497; or e-mail chuck.evilsizer@mt.gov, and must be received no later than 5:00 p.m., September 20, 2019.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Ivan C. Evilsizer at the above address no later than 5:00 p.m., September 20, 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: 130 based on the number of insurers with a Montana certificate of authority.

7. The CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may sign up by clicking on the blue button on the CSI's website at: <http://csimt.gov/laws-rules/> and may specify the subject matter they are interested in. Notices will be sent by e-mail unless a mailing preference is noted in the request. Request may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 2 above or may be made by completing a request form at any rules hearing held by the CSI.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was contacted by U.S. mail on August 15, 2019.

9. With regard to the requirements of 2-4-111, MCA, the office has determined that the amendment of the above-referenced rule will have no significant impact on small businesses.

10. This amended rule shall become effective on January 1, 2020.

/s/ Ivan C. Evilsizer
Ivan C. Evilsizer
Rule Reviewer

/s/ Michelle Dietrich
Michelle Dietrich
Chief Legal Counsel

Certified to the Secretary of State August 13, 2019.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING
ARM 17.36.802 and 17.38.106	)	ON PROPOSED AMENDMENT
pertaining to subdivision and public	)	AND ADOPTION
water and wastewater review fees,)	
and New Rule I pertaining to	)	(SUBDIVISIONS)
certification under 76-4-127, MCA	)	(PUBLIC WATER AND SEWAGE
	)	SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On September 16, 2019, at 10:00 a.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The board and department 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 Sandy Scherer, Legal Secretary, no later than 5:00 p.m., September 9, 2019, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

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

17.36.802 FEE SCHEDULES (1) An applicant for approval under this subchapter shall pay the following fees:

(a) type of lots:	
(i) subdivision lot or parcel <u>or townhouse</u>	\$ 125.00 <u>175.00</u>
(ii) condominium/ townhouse /trailer court/recreational camping vehicle	
campground unit or space	\$ 50.00 <u>70.00</u>
(iii) resubmittal fee - previously approved lot, boundaries are not changed per lot or parcel	\$ 75.00 <u>100.00</u>
(b) type of water system:	
(i) individual or shared water supply system (existing and proposed) per unit	\$ 85.00 <u>120.00</u>
(ii) multiple-user system (non-public):	
(A) - each new system	\$ 315.00 <u>440.00</u> (plus \$ 405.00 <u>150.00</u> / hour for review in excess

	of four hours)
(B) - new distribution system design per lineal foot	\$ 0.25 <u>0.50</u>
(C) - connection to distribution system per lot or unit	\$ 70.00 <u>100.00</u>
(iii) public water system:	
(A) new system per component	per ARM 17.38.106 fee schedule
(B) new distribution system design per lineal foot	\$ 0.25
(C) connection to distribution system per lot or structure	\$ 70.00
(c) type of wastewater disposal:	
(i) existing systems per unit	\$ 75.00 <u>105.00</u>
(ii) new gravity fed system per drainfield	\$ 95.00 <u>130.00</u>
(iii) new dosed system, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems:	
(A) per design	\$ 190.00 <u>250.00</u> (plus \$ 405.00 <u>150.00</u> / hour for review in excess of two hours)
(B) per drainfield	\$ 50.00 <u>70.00</u>
(iv) gray water reuse systems, holding tanks, sealed pit privies, unsealed pit privies, seepage pits, waste segregation, experimental systems	\$ 95.00 <u>130.00</u> (plus \$ 405.00 <u>150.00</u> / hour in excess of two hours)
(v) multiple-user wastewater system (non-public):	
(A) - new collection system design per lineal foot	\$ 0.25 <u>0.35</u>
(B) - connection to collection system per lot or unit	\$ 70.00 <u>100.00</u>
(vi) new public wastewater system per component	per ARM 17.38.106 fee schedule
(A) new collection system design per lineal foot	\$ 0.25
(B) connection to collection system per lot or structure	\$ 70.00
(d) other:	
(i) deviation from circular per request or design	\$ 200.00 <u>300.00</u> (plus \$ 405.00 <u>150.00</u> / hour for review in excess of two hours)
(ii) waiver from rule per request	\$ 200.00 <u>300.00</u> (plus \$ 405.00 <u>150.00</u> / hour for review in excess of two hours)
(iii) reissuance of original approval statement per request	\$ 60.00 <u>90.00</u>

(iv) review of revised lot layout document per request	\$ 425.00 <u>175.00</u>
(v) municipal facilities exemption checklist (former master plan exemption) per application	\$ 400.00 <u>150.00</u>
(vi) nonsignificance determinations/categorical exemption reviews:	
(A) - individual/shared systems per drainfield	\$ 60.00 <u>90.00</u> (plus \$ 405.00 <u>150.00</u> / hour for review in excess of two hours)
(B) - multiple-user non-public systems per lot or structure	\$ 30.00 <u>45.00</u> (plus \$ 405.00 <u>150.00</u> / hour for review in excess of two hours)
(C) - source specific mixing zone per drainfield	\$ 200.00 <u>275.00</u>
(D) - public systems per drainfield	per ARM 17.38.106 fee schedule
(vii) storm drainage plan review:	
(A) - plans exempt from Circular DEQ-8 <u>simple plan review</u> per lot project	\$ 40.00 <u>150.00</u>
(B) - plans subject to Circular DEQ-8 <u>standard plan</u> review:	
(I) per design <u>project</u>	\$ 180.00 <u>250.00</u>
(II) <u>plus</u> per lot	\$ 40.00 <u>60.00</u> (plus \$ 405.00 <u>150.00</u> / hour for review in excess of 30 minutes per lot)
(viii) preparation of environmental assessments/environmental impact statements:	actual cost:-
(ix) <u>review for compliance with ARM 17.30.718</u>	\$900.00 (plus <u>\$150 / hour for review in excess of 6 hours).</u>

AUTH: 76-4-105, MCA

IMP: 76-4-105, MCA

REASON: The department is proposing to increase subdivision fees to cover actual costs for reviewing plats and subdivisions, conducting inspections, and conducting enforcement activities. The last major change to the subdivision fees was in 2013. Previous fiscal year expenses and revenue were the following:

FY 17 Revenue \$ 826,213.53	Expenses \$ 921,385.02	Difference \$ -95,171.49
FY 18 Revenue \$ 955,232.33	Expenses \$ 971,050.56	Difference \$ -15,818.23

Average expenses exceeded average revenue by approximately 7 percent over the past two fiscal years. Expenses to the department grew by over 5 percent between FY 17 and FY 18. Assuming a conservative average increase in expenses of 2 percent per year, the department projects that fees will need to be increased by 40 percent to cover the department's actual costs through 2027. The department has projected expenses through this date to allow the department and contracted counties to budget and plan for future needs and to provide long-term predictability for the regulated community. The proposed fee increase used an average 40 percent increase per component, to the next five or ten cent or dollar increment. Approximately 800 subdivision files per year will be impacted by this fee increase, resulting in an approximate cumulative increase of \$382,093 per year. The department consulted with a broad representation of stakeholders, including developers, consultants, engineers, and others in the regulated community, and has received no negative feedback regarding these proposed fee increases.

In addition to this general increase in fees, the department is proposing to make the following other amendments to ARM 17.36.802.

The department is proposing to amend (1)(a)(i) and (ii) so that townhouse applications will be subject to the same fees as subdivision lots. Townhouses create new lots that take as much time to review as other subdivision lots, and the fees should reflect the time incurred in reviewing them. Together with the general fee increase discussed above, this change will result in an increased fee of \$125 for each townhouse. The department does not maintain separate data for townhouse applications, and each application contains a different number of townhouses. Nevertheless, the department estimates that it receives approximately twenty townhouse applications per year, with each project generally containing ten to twenty townhouses.

The department is proposing to delete (1)(b)(iii)(B) and (C) and (1)(c)(vi)(A) and (B), which are duplicative of (1)(b)(iii)(A) and (1)(c)(vi). This amendment will have no impact on fees; it will merely delete the duplicative rule sections.

The department is proposing to update the terminology in (1)(d)(vii)(A) and (B) to refer to "simple" and "standard" storm water plans instead of "exempt" and "non-exempt" plans. This is necessary to conform the rule language with the 2018 edition of Department Circular DEQ-8. Instead of applying the general 40 percent fee increase discussed above, the department is proposing to increase fees for simple plans from \$40 to \$150, but on a per-project basis instead of a per-lot basis. This is necessary because simple plans take a minimum of one hour of review time. Approximately 1/3 of all subdivision applications include simple storm water plans, or approximately 266 files per year. This will result in a cumulative increase of approximately \$29,620 per year. The department is proposing to amend (1)(d)(vii)(B)(I) to refer to the "project" instead of the "design" and to amend (1)(d)(vii)(B)(II) to say "plus per lot," both which are necessary to clarify the language in the fee.

The department is proposing that applicants pay to cover the costs of the department's review to classify a subsurface wastewater treatment system as level 1a, level 1b, or level 2 under ARM 17.30.718. This review takes approximately six hours of staff time. This new fee is necessary to cover the costs of this review because currently applicants pay no fee for this review. The department receives

approximately three of these applications per year.

17.38.106 FEES (1) remains the same.

(2) Department review will not be initiated until fees calculated under (2)(a) through (f) and (5) have been received by the department. If applicable, the final approval will not be issued until the calculated fees under (3) and (4) have been paid in full. The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or subparts listed in these subsections:

(a) The fee schedule for designs requiring review for compliance with Department Circular DEQ-1 is set forth in Schedule I, as follows:

SCHEDULE I

Policies	
ultra violet disinfection	\$ 700 <u>1,000</u>
point-of-use/point-of-entry treatment	\$ 700 <u>1,000</u>
Section 1.0 Engineering Report	\$ 280 <u>400</u>
Section 3.1 Surface water	
quality and quantity	\$ 700 <u>1,000</u>
structures	\$ 700 <u>1,000</u>
Section 3.2 Ground water	\$ 840 <u>1,200</u>
Section 4.1 Microscreening	\$ 280 <u>400</u>
Section 4.2 Clarification	
standard clarification	\$ 700 <u>1,000</u>
solid contact units	\$ 1,400 <u>2,000</u>
Section 4.3 Filtration	
rapid rate	\$ 1,750 <u>2,500</u>
pressure filtration	\$ 1,400 <u>2,000</u>
diatomaceous earth	\$ 1,400 <u>2,000</u>
slow sand	\$ 1,400 <u>2,000</u>
direct filtration	\$ 1,400 <u>2,000</u>
biologically active filtration	\$ 1,400 <u>2,000</u>
membrane filtration	\$ 1,400 <u>2,000</u>
micro and ultra filtration	\$ 1,400 <u>2,000</u>
bag and cartridge filtration	\$ 420 <u>600</u>
Section 4.4 Disinfection	\$ 700 <u>1,000</u>
Section 4.5 Softening	\$ 700 <u>1,000</u>
Section 4.6 Ion Exchange	\$ 700 <u>1,000</u>
Section 4.7 Aeration	
natural draft	\$ 280 <u>400</u>
forced draft	\$ 280 <u>400</u>
spray/pressure	\$ 280 <u>400</u>
packed tower	\$ 700 <u>1,000</u>
Section 4.8 Iron and manganese	\$ 700 <u>1,000</u>
Section 4.9 Fluoridation	\$ 700 <u>1,000</u>
Section 4.10 Stabilization	\$ 420 <u>600</u>
Section 4.11 Taste and odor control	\$ 560 <u>800</u>
Section 4.12 Adsorptive media	\$ 700 <u>1,000</u>

Chapter 5 Chemical application	\$ 980 <u>1,400</u>
Chapter 6 Pumping facilities	\$ 980 <u>1,400</u>
Section 7.1 Plant storage	\$ 980 <u>1,400</u>
Section 7.2 Hydropneumatic tanks	\$ 420 <u>600</u>
Section 7.3 Distribution storage	\$ 980 <u>1,400</u>
Chapter 8 Distribution system	
per lot fee	\$ 70 <u>100</u>
non-standard specifications	\$ 420 <u>600</u>
transmission distribution (per lineal foot)	\$ 0.25 <u>0.35</u>
rural distribution system (per lineal foot)	\$ 0.03 <u>0.04</u>
sliplining existing mains (per lineal foot)	\$ 0.15 <u>0.20</u>
Chapter 9 Waste disposal	\$ 700 <u>1,000</u>
Appendix A	
new systems	\$ 280 <u>400</u>
modifications	\$ 140 <u>200</u>

(b) The fee schedule for designs requiring review for compliance with Department Circular DEQ-2 is set forth in Schedule II, as follows:

SCHEDULE II

Chapter 10 Engineering reports and facility plans	
engineering reports (minor)	\$ 280 <u>400</u>
comprehensive facility plan (major)	\$ 1,400 <u>2,000</u>
Chapter 30 Design of sewers	
per lot fee	\$ 70 <u>100</u>
non-standard specifications	\$ 420 <u>600</u>
collection system (per lineal foot)	\$ 0.25 <u>0.35</u>
sliplining existing mains (per lineal foot)	\$ 0.15 <u>0.20</u>
Chapter 40 Sewage pumping station	
force mains (per lineal foot)	\$ 0.25 <u>0.35</u>
1000 gpm or less	\$ 700 <u>1,000</u>
greater than 1000 gpm	\$ 1,400 <u>2,000</u>
Chapter 60 Screening grit removal	
screening devices and comminutors	\$ 420 <u>600</u>
grit removal	\$ 420 <u>600</u>
flow equalization	\$ 700 <u>1,000</u>
Chapter 70 Settling	\$ 1,120 <u>1,500</u>
Chapter 80 Sludge handling	\$ 2,240 <u>3,000</u>
Chapter 90 Biological treatment	\$ 3,360 <u>4,700</u>
nonaerated treatment ponds	\$ 1,120 <u>1,500</u>
aerated treatment ponds	\$ 1,960 <u>2,800</u>
Chapter 100 Disinfection	\$ 900 <u>1,200</u>
Chapter 120 Irrigation and Rapid Infiltration Systems	\$ 980 <u>1,400</u>
Appendices A and C (per design)	\$ 980 <u>1,400</u>

(c) The fee schedule for designs requiring review for compliance with

Department Circular DEQ-3 is set forth in Schedule III, as follows:

SCHEDULE III

Section 3.2 Ground water	\$ 840 <u>1,200</u>
Chapter 6 Pump facilities	\$ 420 <u>600</u>
Chapter 7 Finished storage/hydropneumatic tanks	\$ 420 <u>600</u>
Chapter 8 Distribution system	\$ 420 <u>600</u>

(d) The fee schedule for designs requiring review for compliance with Department Circular DEQ-4 is set forth in Schedule IV, as follows:

SCHEDULE IV

Chapter 4 Pressure Dosing	\$ 280 <u>400</u>
Chapter 5 Septic Tanks	\$ 280 <u>400</u>
Chapter 6 Soil Absorption Systems	\$ 280 <u>400</u>
Chapter 6, Subchapter 6.8 ETA and ET Systems	\$ 700 <u>1,000</u>
Chapter 7, Subchapters 7.1, 7.2, and 7.3 Filters	\$ 280 <u>400</u>
Chapter 7, Subchapter 7.4 Aerobic Treatment	\$ 700 <u>1,000</u>
Chapter 7, Subchapter 7.5 Chemical Nutrient-Reduction Systems	\$ 700 <u>1,000</u>
Chapter 7, Subchapter 7.6 Alternate Advanced Treatment Systems	\$ 700 <u>1,000</u>
Chapter 8 Holding Tanks, Pit Privy, Seepage Pits, Waste Segregation, Experimental Systems	\$ 280 <u>400</u>
Appendix D	\$ 280 <u>400</u>
Non-degradation Review	\$ 420 <u>600</u>

(e) The fee schedule for designs requiring review for compliance with Department Circular DEQ-10 is set forth in Schedule V as follows:

SCHEDULE V

Spring box and collection lateral	\$ 350 <u>500</u>
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(f) The fee schedule for designs requiring review for compliance with Department Circular DEQ-16 is set forth in Schedule VI, as follows:

SCHEDULE VI

Cisterns	\$ 420 <u>600</u>
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(3) Fees for review of plans and specifications not covered under (2) are established by the department based on a charge of ~~\$105~~ 150 per hour multiplied by the time required to review the plans and specifications. The review time applied to each set of plans and specifications will be determined by the review engineer and documented with time sheets.

(4) The fee for review of plans and specifications previously denied, for staff

time over two hours, is \$405 150 per hour, assessed in half-hour increments, multiplied by the time required to review the plans and specifications. The review time applied to each set of plans and specifications must be determined by the review engineer and documented with time sheets.

(5) The fee for review of deviations is \$200 300 per deviation.

(6) and (7) remain the same.

AUTH: 75-6-108, MCA

IMP: 75-6-108, MCA

REASON: The board is proposing to amend ARM 17.38.106 to increase fees for department review of plans and specifications of public water supply and public wastewater systems. Such increases are necessary to cover department costs in conducting such reviews. The last major change to these fees was in 2010. Previous fiscal year expenses and revenue were the following:

FY 17 Revenue \$ 470,097.73	Expenses \$ 498,450.95	Difference \$ -28,353.22
FY 18 Revenue \$ 606,894.58	Expenses \$ 659,109.63	Difference \$ -52,215.05

Average expenses exceeded average revenue by approximately 7 percent over the past two fiscal years. Assuming a conservative average increase in expenses of 2 percent per year, the Public Water and Wastewater Engineering Review program projects that fees will need to be increased by 40 percent to cover the department's actual costs through 2027. Using this time frame allows the department to budget and plan for future needs and provides long-term predictability for the regulated community. The proposed fee increase used an average 40 percent increase per component, to the next five or ten cent or dollar increment. Approximately 400 public water and wastewater applications per year will be affected by these fee increases, resulting in a cumulative increase of approximately \$242,758 per year. The department consulted with a broad representation of stakeholders, including developers, consultants, engineers, and others in the regulated community, and has received no negative feedback regarding these proposed fee increases.

4. The proposed new rule provides as follows:

NEW RULE I CERTIFYING AUTHORITY UNDER 76-4-127, MCA (1) A county water and/or sewer district is eligible to be a certifying authority under 76-4-127, MCA, if the district:

(a) is incorporated under Title 7, chapter 13, MCA;

(b) is in compliance with Title 75, chapters 5 and 6, MCA;

(c) is within a jurisdictional area covered by a growth policy pursuant to Title 76, chapter 1, MCA;

(d) has an on-staff or retained professional engineer to certify compliance with department design standards for water, wastewater, and storm water facilities; and

(e) has a utility master plan approved by the department within the past 10 years that addresses capacity of the water and wastewater systems to serve

additional development in compliance with department design circulars.

(2) A municipality is eligible to be a certifying authority under 76-4-127, MCA, if the municipality:

- (a) is in compliance with Title 75, chapters 5 and 6, MCA;
- (b) is a first or second class municipality or is within a jurisdictional area covered by a growth policy pursuant to Title 76, chapter 1, MCA; and
- (c) has an on-staff or retained professional engineer to certify compliance with department design standards for water, wastewater, and storm water facilities.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, 76-4-127, MCA

REASON: Under 76-4-125 and 76-4-127, MCA, a subdivision may be exempt from department review if a certifying authority certifies that the subdivision will have adequate storm water drainage and that the subdivision will be served by adequate water and wastewater facilities. Before 2019, this exemption was available to a subdivider only if the governing body of certain municipalities certified that the subdivision would be served by adequate municipal facilities. In 2019, the Legislature enacted HB 55, which, among other things, expanded the exemption to include county water and/or sewer districts and removed the statutory eligibility criteria for municipalities. HB 55 directed the department to adopt eligibility requirements for municipalities and county water and/or sewer districts to qualify as a certifying authority under 76-4-127, MCA.

The department proposes New Rule I to comply with HB 55. Section (1) of New Rule I provides the eligibility requirements for county water and/or sewer districts, while (2) provides the eligibility requirements for municipalities.

Sections (1)(a) and (1)(b) require county water and/or sewer districts to be incorporated under Title 7, chapter 13, MCA, and to be in compliance with Title 75, chapters 5 and 6, MCA. These requirements are necessary to be consistent with the statutory definition of "adequate county water and/or sewer district facilities" in 76-4-102, MCA.

Section (1)(c) requires the county water and/or sewer district to be within a jurisdictional area covered by a growth policy pursuant to Title 76, chapter 1, MCA. This requirement ensures that county water and sewer districts have planned for future development and have already evaluated their water, wastewater, and storm water needs, making additional oversight by the department unnecessary.

Section (1)(d) requires the county water and/or sewer district to have an on-staff or retained professional engineer to certify compliance with department design standards for water, wastewater, and storm water facilities. Because the exemption will allow a subdivision to avoid department subdivision review, professional engineering certification is necessary to ensure that the county water and/or sewer district is familiar with department minimum design standards for those facilities.

Section (1)(e) requires the county water and/or sewer district to have a utility master plan approved by the department within the past ten years that addresses capacity of the water and wastewater system to serve additional development in compliance with department design circulars. A utility master plan is a planning and engineering tool that provides a road map to ensure that water and wastewater

facilities can reliably and efficiently serve the current and future needs of the county water and/or sewer district. The plan must include current demands on the facilities, proposed future demands, and an evaluation of the facilities' capacity to serve future additional demands when using this exemption.

The department considered adopting a minimum population threshold as the basis for determining county water and/or sewer district eligibility. The department rejected this approach because a population threshold would eliminate some smaller districts that have adequately planned for future utility service while allowing other districts that may not have done so.

Section (2)(a) requires municipalities to be in compliance with Title 75, chapters 5 and 6, MCA. This requirement is necessary to be consistent with the statutory definition of "adequate municipal facilities" in 76-4-102, MCA.

Section (2)(b) requires municipalities to be a first or second class municipality or to be within a jurisdictional area covered by a growth policy pursuant to Title 76, chapter 1, MCA, in order to be a certifying authority. First and second class municipalities generally have adequately planned for future development, making additional department oversight unnecessary. Municipalities with a growth policy also have planned for future development, including their water, wastewater, and storm water facility needs, making additional oversight by the department unnecessary.

Section (2)(c) requires a municipality to have an on-staff or retained professional engineer to certify compliance with department design standards for water, wastewater, and storm water facilities. Because the exemption will allow a subdivision to avoid department subdivision review, professional engineering certification is reasonably necessary to ensure that the municipality is familiar with department minimum design standards regarding water, wastewater, and storm water facilities.

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 Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m. September 20, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. The board and department maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail

unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the board or department.

7. Sarah Clerget, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

8. The bill sponsor contact requirements of 2-4-302, MCA, does apply. The sponsor was notified via regular mail on May 29, 2019.

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

10. These rules will become effective January 1, 2020.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BY: /s/ Christine Deveny
CHRISTINE DEVENY
Chair

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Shaun McGrath
SHAUN McGRATH
Director

Certified to the Secretary of State, August 13, 2019.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of a new	)	NOTICE OF PUBLIC HEARINGS
subchapter codifying New Rules I	)	ON PROPOSED ADOPTION
through X for technologically)	
enhanced naturally occurring	)	(SOLID WASTE MANAGEMENT)
radioactive material (TENORM) waste)	

TO: All Concerned Persons

1. On September 24, 2019, at 7:00 p.m., at the Glendive City Hall, 300 S. Merrill Avenue, Glendive, Montana, the department will hold a public hearing to consider the proposed adoption of the above-stated rules. Before the hearing, on the same day, at 6:00 p.m., the department will conduct an informal public meeting to discuss the proposed rules and answer questions pertaining to these rules. On October 10, 2019, at 10:00 a.m., in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the department will hold a public hearing to consider the proposed adoption of the above-stated rules. Before the hearing, on the same day, at 9:00 a.m., the department will conduct an informal public meeting to discuss the proposed rules and answer questions pertaining to these rules.

2. The department 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 Sandy Scherer, Legal Secretary, no later than 5:00 p.m., September 17, 2019, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Naturally occurring radioactive material occurs at low levels in soils and rocks and contains one or more radioactive isotopes, also called radionuclides. These radionuclides are present in different sources, such as geologic formations, ground water aquifers, and wastewater treatment bio-solids. Naturally occurring radioactive material generally consists of the radionuclides uranium and thorium and their radioactive decay products, including isotopes of radium. Because radium is present at low levels in the natural environment, everyone has some exposure to it.

Technologically enhanced naturally occurring radioactive material (TENORM) is in the same group of NORM radionuclides, but has been modified or "technologically enhanced." Under some circumstances, TENORM decay chains emitting gamma radiation, particularly Ra-226, Ra-228, and their decay products may present an external radiation health risk to humans. The potential risk depends on the concentrations of these radionuclides in the materials accessible to the environment. TENORM may also present an internal radiation health risk to humans if it is inhaled or ingested and alpha radiation is emitted inside the body. The

department is proposing to require testing for Ra-226 and Ra-228 because they are the most prominent uranium and thorium decay products present in TENORM. Ra-226 is a decay product of uranium; Ra-228 is a decay product of natural thorium.

In Montana, solid waste classifications depend on the waste's physical and chemical characteristics and their potential to cause environmental degradation or public health hazards. The classification determines the degree of care required in handling and disposal. TENORM is a "special waste," defined in 75-10-802(8), MCA, to mean "a solid waste that has unique handling, transportation, or disposal requirements to ensure protection of the public health, safety, and welfare and the environment." Special wastes require management at a Class II solid waste management system. Class II solid waste management systems are required to use the most stringent controls of any solid waste management system to ensure the continued protection of human health and the environment. In addition to the requirements currently applicable to special waste management systems, the department is proposing to add a new subchapter, New Rules I through X to provide additional requirements specific to the management of TENORM wastes.

In the absence of federal TENORM regulations, states have jurisdiction and the authority for promulgating TENORM regulations. Therefore, the department is proposing these rules to ensure that this waste stream is regulated appropriately. Furthermore, TENORM is not federal Nuclear Regulatory Commission (NRC) licensed material. NRC-licensed material consists of source material, special nuclear material, or byproduct material and must be received, possessed, used, transferred or disposed of only under a general or specific license issued by NRC. (Atomic Energy Act, Title 42 United States Code (USC) § 2011-2021).

The NRC or Agreement States regulate use and possession of radioactive materials that fall under the purview of the federal Atomic Energy Act. An Agreement State is one that has established an agreement with the NRC for the state to regulate the use and possession of radioactive materials within that state. Montana is not an Agreement State, so use and possession of applicable radioactive materials in Montana are under the jurisdiction of the NRC. ("Development of TENORM Rules for the State of Montana," Tetra Tech, 2016, available at <http://deq.mt.gov/Land/solidwaste> or by contacting the department's Solid Waste Program at (406) 444-5300).

In developing these proposed rules, the department reviewed model TENORM rules published by the Conference of Radiation Control Program Directors (CRCPD), a national non-profit, non-governmental organization. CRCPD's membership is mainly composed of state and local government radiation professionals but is open to anyone with an interest in radiation protection. CRCPD saw a need for consistency in state regulations and organized work groups and later a commission to draft Suggested State Regulations on TENORM (E-42 Task Force Report "Review of TENORM in the Oil and Gas Industry," 2015). The model rules, "Regulation and Licensing of TENORM Suggested State Regulations for Control of Radiation" Volume 1, Part N (CRCPD, 2014) was published by CRCPD and provides suggested state regulations for management of TENORM.

The department initially proposed TENORM rules on August 18, 2017. The department held two public hearings and received valuable comments from the public. The initial 60-day public comment period was extended due to public

interest. In response to public comments, the department let the original rule notice expire with the intention of re-writing the rules based upon the input received.

To obtain additional public input, the department organized a TENORM workgroup to help refine the proposed TENORM rules. The workgroup was limited in size and included participants from non-governmental organizations, industry, local government, science, and informed citizenry. The TENORM workgroup met on October 16, 2018, in Billings, Montana to discuss the proposed rules. The public was welcome to watch and add input at the end of the workgroup meeting. The department revised the proposed rules based, in part, on the feedback received. Internal department coordination provided additional input to the proposed rules.

The department also sought input from the State Review of Oil and Natural Gas Environmental Regulations (STRONGER), a multi-stakeholder, educational organization. Its board of directors is composed of representatives from the oil and gas industry, state oil and gas environmental regulatory agencies, and the environmental public advocacy community. STRONGER reviewed and provided comments on the proposed rules.

The department also obtained assistance from Tetra Tech Inc. (Tetra Tech) in developing the TENORM rules. Tetra Tech is a worldwide consulting and engineering firm with expertise in science, research, engineering, construction, and information technology. Tetra Tech developed a report entitled "Development of TENORM Rules for the State of Montana" (December 2016) (the Tetra Tech report).

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

NEW RULE I PURPOSE AND APPLICABILITY (1) The rules in this subchapter are adopted by the department under Title 75, chapter 10, part 2, MCA. The purpose of this subchapter is to establish requirements for the management of TENORM waste at TENORM waste management systems.

(2) This subchapter applies to each applicant, owner, operator, or licensee of a TENORM waste management system that accepts, stores, treats, recycles, recovers, disposes, or transports TENORM waste with a concentration of radium-226 (Ra-226) plus radium-228 (Ra-228), excluding background radiation, equal to or greater than 5.0 picocuries per gram (pCi/g). Wherever there is a requirement imposed on an owner or operator in this subchapter, the licensee also shall comply with that requirement.

(3) The owner or operator of an existing waste management system licensed to accept TENORM waste shall comply with these rules by 12 months after [the effective date of these rules].

(4) The owner or operator of a TENORM waste management system shall also comply with the requirements for a Class II solid waste management system in ARM Title 17, chapter 50, subchapters 4, 5, 10, 11, 12, 13, and 14, except for ARM 17.50.1109 and 17.50.1404(2)(a).

(5) A TENORM waste management system may not accept source material and byproduct material as defined in 42 USC § 2014.

(6) This subchapter does not relieve any owner or operator of the obligation to comply with other applicable federal, state, or local requirements.

(7) The department incorporates by reference "Requirements for the

Characterization of TENORM Wastes," Montana DEQ – Solid Waste Program (Revised August 2019). Copies of that document are available for public inspection at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901, or by contacting the department at (406) 444-5300.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: The department is proposing (2) to set a concentration of equal to or greater than 5 pCi/g, excluding background radiation, for TENORM (Ra-226 plus Ra-228) as the concentration subject to regulation under this subchapter. TENORM waste below 5 pCi/g is still a solid waste subject to the solid waste regulations.

Setting 5 pCi/g as the lower limit, excluding background radiation, for TENORM waste management systems is taking a conservative approach to protecting human health and the environment. NRC uses 5 pCi/g for Ra-226 and Ra-228 as the cleanup standard for uranium and thorium mill tailings (10 CFR Part 40, App. A, Criterion 6(6)). In addition, EPA uses 5 pCi/g as a cleanup standard for land and buildings contaminated with residual radioactive materials from inactive uranium processing sites. Finally, the model rules developed by CRCPD recommends setting a threshold for regulation of TENORM of 5 pCi/g. The use of 5 pCi/g as a standard by EPA, NRC, and CRCPD supports the department's proposed use of the same lower limit.

The department is proposing (3) to allow existing licensed facilities that currently manage TENORM waste a maximum of 12 months to comply with the additional requirements of these proposed rules. The department believes 12 months is an adequate timeframe based upon the department's experience in implementing new solid waste rules and working with waste management systems to implement new requirements.

The department is proposing (4) to require TENORM waste management systems to follow the requirements for Class II solid waste management systems under ARM Title 17, chapter 50, subchapters 4, 5, 10, 11, 12, 13, and 14, except for ARM 17.50.1109 and 17.50.1404(2)(a), in addition to the requirements in this subchapter. It is important that TENORM waste management systems continue following the existing rules for Class II solid waste management systems to isolate waste from the environment and people, thereby protecting human health and the environment. For example, ARM Title 17, chapter 50, subchapter 12 has liner design requirements and ARM Title 17, chapter 50, subchapter 13 has detailed ground water monitoring and corrective action requirements.

The department is proposing that TENORM waste management systems not be required to comply with ARM 17.50.1109 and 17.50.1404(2)(a) for the reasons stated for New Rule VI(3) and New Rule VIII(1), respectively.

The department is proposing (5) to exclude source material and byproduct material because it is under the jurisdiction of the NRC, as stated in the General Statement of Reasonable Necessity.

The department is proposing (6) to inform owners and operators that there may be other applicable federal, state, or local requirements and to clarify that this subchapter does not exempt owners and operators from complying with those

requirements.

The department is proposing (7) to incorporate by reference the existing waste characterization document, entitled "Requirements for the Characterization of TENORM Wastes," Montana DEQ – Solid Waste Program (revised August 2019). The department will propose to amend this document through future rulemaking if needed to address changes in TENORM waste characterization, emerging technology, and industry practices to protect human health and the environment.

NEW RULE II DEFINITIONS In this subchapter, the following definitions apply:

- (1) "Absorbed dose" has the meaning specified in ARM 37.14.102.
- (2) "Background radiation" means the natural radiation that is present in the environment. It includes cosmic radiation, which comes from the sun and stars; terrestrial radiation, which comes from the Earth, and radiation from naturally occurring radioactive materials.
- (3) "Contaminated soil" has the meaning specified in ARM 17.50.403.
- (4) "Curie" has the meaning specified in ARM 37.14.102.
- (5) "Department" means the Department of Environmental Quality.
- (6) "Dose" means the amount of radiation energy deposited in human tissue.
- (7) "Exposure" is a measure of the amount of ionization produced in air by gamma photons or x-rays.
- (8) "Filter media" means a porous material used to filter solids from fluids.
- (9) "Facility" has the meaning specified in ARM 17.50.502.
- (10) "Hazardous waste" has the meaning specified in 75-10-403, MCA.
- (11) "Health physicist" means a scientist or engineer that has sufficient training and experience to make sound professional judgments regarding radiation monitoring, equipment, environmental protection, health, and safety. The training and experience must pertain to naturally occurring radioactive materials and health physics concerning protecting people and the environment from potential radiation hazards. Sufficient training and experience is gained through a baccalaureate and/or post-graduate degree in the natural sciences or engineering, professional certifications, and work experience.
- (12) "Landfill" has the meaning specified in ARM 17.50.502.
- (13) "Leachate" has the meaning specified in ARM 17.50.502.
- (14) "Leachate collection system" has the meaning specified in ARM 17.50.502.
- (15) "Leachate removal system" has the meaning specified in ARM 17.50.502.
- (16) "Licensed boundary" has the meaning specified in ARM 17.50.502.
- (17) "Load" is a measured quantity of waste prepared for or being transported at any one time.
- (18) "Method of receipt" means the name of the transporter and equipment used to deliver the waste to the TENORM waste management system.
- (19) "Microroentgen" (μR) is one millionth of a roentgen.
- (20) "Millirem" (mrem) means a unit of equivalent dose that is equal to one thousandth of a rem.
- (21) "Milliroentgen" (mR) means a unit of measurement for radiation

exposure that is one thousandth of a roentgen.

(22) "Picocuries" is a unit of radioactivity that is one trillionth of a curie.

(23) "Qualified ground water scientist" has the meaning specified in ARM 17.50.1302.

(24) "Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles with sufficient kinetic energy to strip electrons from atoms. Radiation does not include non-ionizing radiation, such as radio or microwaves, or visible, infrared, or ultraviolet light.

(25) "Rem" or "roentgen equivalent man" is a unit of measure that quantifies the amount of energy deposited by ionizing radiation deposited in human tissue modified by the effects of the specific type of radiation.

(26) "Roentgen" (R) is the unit of measurement for x-radiation or gamma radiation producing one electrostatic unit of positive or negative ionic charge in one cubic centimeter of air under standard pressure or 0.000258 coulombs per kilogram of dry air.

(27) "Screening" means the examination and measurement procedures to verify that incoming waste meets the acceptance criteria for the waste management system.

(28) "Solid waste" has the meaning specified in ARM 17.50.403.

(29) "Solid waste management system" has the meaning specified in ARM 17.50.403.

(30) "Source" means the location where the TENORM waste is generated or, if aggregated, the location where the last aggregation occurs.

(31) "Spill" means the accidental or unintentional release of TENORM waste during transport or onsite at the TENORM management system in an area not designated for disposal.

(32) "Storage" has the meaning specified in ARM 17.50.403.

(33) "Technologically enhanced naturally occurring radioactive material" (TENORM) means naturally occurring radioactive material whose radionuclide concentrations are increased by or as a result of past or present human practices. TENORM does not include background radiation or the natural radioactivity of rocks and soils. TENORM does not include "source material" and "byproduct material," as both are defined in 42 USC § 2014, a section of the Atomic Energy Act of 1954.

(34) "TENORM surface-contaminated objects" means objects that have TENORM distributed on either the external or internal surfaces, or both, including but not limited to pipes, valve stems, and equipment or survey instruments.

(35) "TENORM waste" is solid waste that contains TENORM.

(36) "TENORM waste management system" means a system that accepts, stores, treats, recycles, recovers, disposes, or transports TENORM waste. Such a system may be composed of one or more waste management facilities. This term does not include hazardous waste management systems.

(37) "TENORM waste unit" means a discrete area of land or an excavation used for the landfilling or other disposal of TENORM waste at a TENORM waste management system.

(38) "Total Effective Dose Equivalent" (TEDE) means the overall measured and/or calculated effective dose that takes into account the type of radiation and the

nature of each organ or tissue being irradiated.

(39) "Transport" has the meaning specified in ARM 17.50.403.

(40) "Treatment" has the meaning specified in ARM 17.50.403.

(41) "Unit" has the meaning specified in ARM 17.50.502.

(42) "Waste" has the meaning specified in ARM 17.50.502.

(43) "Waste characterization" means the standardized process for analyzing the composition of different waste streams.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: The department is proposing New Rule II so that the department and the regulated community have a common understanding as to the meaning of the terms used in this proposed subchapter. The defined terms include terms that are commonly used in the radiation field. The department wishes to explain the source or provide the rationale of some of the definitions in the following paragraphs.

The department is proposing to define "filter media" in (8) because this term is not commonly used by the public. The department is proposing specific requirements for filter media under New Rule VI(1)(d). Proposed New Rule VI(1)(d) contains different waste characterization sampling requirements for filter media than other waste material due to the potential for filter media to have higher radionuclide concentrations than other waste.

The department is defining the qualifications of a health physicist in (11). It is reasonably necessary to broadly define the qualifications of a health physicist because the field of health physics covers many subject areas that pertain to the protection of human health from ionizing radiation. Education is one component of the qualifications of a health physicist. A health physicist must have a bachelor's degree in health physics or a related science or engineering field of study and may have an advanced degree. Experience and training are also important qualifications for a health physicist, providing practical knowledge and application of that knowledge in real life situations regarding radiation safety. The proposed definition of a health physicist requires more qualifications than what is necessary for a person to become a Certified Health Physicist. A degree in health physics is not a requirement to become a Certified Health Physicist, but the person must successfully complete an accreditation exam administered by the American Board of Health Physicists. There are currently few Certified Health Physicists in Montana experienced in TENORM and waste management. Therefore, the department is proposing a definition of "health physicist" that encompasses education, experience, and training. Under New Rule VI(1)(j), (l), and (m), a health physicist is needed to develop a health and radiation safety plan, procedures to monitor concentrations, and provisions for monitoring dose at the boundary of a TENORM waste management system.

The department is proposing to define "source" in (30) as the location where the TENORM waste is generated or, if subsequently aggregated, the place where the last aggregation occurs. This is necessary because facilities, such as resource recovery facilities, may consolidate waste from more than one location or process. The definition is needed for coordination with New Rule III(3), (7); and New Rule

VI(2).

The department is proposing to broadly define "spills" in (31). This is necessary to ensure that all releases of TENORM are evaluated and handled properly in accordance with New Rule X.

The department is proposing in (33) to provide the same definition of "TENORM" as provided in Suggested State Regulations Section N.3 - Definitions, published by the Conference of Radiation and Control Program Directors (CRCPD). This is necessary to provide uniformity and consistency for state TENORM regulations because there is no federal equivalent.

The proposed definition of TENORM includes materials with increased radionuclide concentrations due to human activities above background levels specific to location. Materials that are exposed to the accessible environment as a result of human activities, but that have not been concentrated, would not be considered TENORM. Excavated soil, for example that which is removed for the construction of a basement, is not TENORM because the soil is just being moved and not concentrated. In a similar manner, materials brought up to the surface by drilling operations, including drill cuttings and mud, do not meet the proposed definition of TENORM.

Sampling shows that NORM that has been exposed to the environment by human activities are low in concentration of the relevant nuclides. They are below the 5 pCi/g combined radium threshold for regulation of TENORM in New Rule I(3). Six years of data collected from department-licensed solid waste facilities have shown drill cuttings to be significantly below 5 pCi/g combined radium. In addition, the department has found from recent testing of mine tailings, soil samples from petroleum release sites, granulated activated carbon from chlorinated solvent soil vapor extraction treatment filters, soil samples from petroleum tank excavation sites, and water treatment plant sludge from an historic mining site, that the concentration of combined radium in these materials is well below 5 pCi/g.

The department notes that EPA guidance has used a definition of TENORM that also includes NORM that has been "exposed to the accessible environment as a result of human activities such as manufacturing, mineral extraction, or water processing" (Technologically Enhanced Naturally Occurring Radioactive Materials from Uranium Mining, Volume 1: Mining and Reclamation Background, and Volume 2: Investigation of Potential Health, Geographic, and Environmental Issues of Abandoned Uranium Mines, EPA, 2008). EPA's definition of TENORM is in the context of uranium mining and milling. The department does not believe this definition is appropriate because it is in relation to uranium mining and milling and not to other industries. Furthermore, there is a very high volume of NORM, such as drill cuttings, mining tailings, and dirt from excavations. Because these materials are very unlikely to exceed 5 pCi/g, the cost and time required for characterization outweigh the minimal possible benefit of including NORM exposed to the environment in the definition of TENORM.

The department's proposed definition of TENORM expressly excludes source material and byproduct material. "Source material" is uranium, or thorium, or both, in any physical or chemical form, or ores that contain 0.05 percent or more of uranium or thorium, or both. It does not include special nuclear material, which is plutonium, uranium 233, uranium enriched in 233 or 235, or any other material

designated by NRC as special nuclear material. 10 CFR 20.1003 (2019). "Byproduct material" is: radioactive material yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material; or tailings or wastes from ore processed for source material content, or radium 226 produced for commercial, medical, or research purposes. 10 CFR 20.1003 (2019). The definition of TENORM does not include high-level or low-level radioactive waste. Those types of waste are byproduct materials made as a result of nuclear power or weapons production, and are not naturally occurring.

The department is proposing to differentiate between TENORM waste and TENORM surface-contaminated objects in (34). TENORM surface-contaminated objects, such as valve stems, tanks, and pipes, typically do not have uniform concentrations as compared to soil or soil-like material that act differently within the waste unit compared to soil-like material, and have a strong affinity to the surface of materials unlike TENORM radionuclides in soil-like material. TENORM surface-contaminated materials typically have densities that are two or three times higher than soil or soil-like material. Due to these unique characteristics, it may be difficult to accurately determine the concentration of radionuclides in TENORM surface-contaminated objects using standard concentration waste characterization methods. Therefore, the department is proposing a more stringent gate-screening limit for TENORM surface-contaminated objects under proposed New Rule III(2). See the reason statement for that rule for further discussion.

NEW RULE III TENORM WASTE MANAGEMENT SYSTEM LIMITS AND RESTRICTIONS (1) Except as provided in (2), the owner or operator of a TENORM waste management system shall ensure that:

(a) TENORM waste entering the system does not exceed a gate screening level of 200 microrentgen per hour (μ R/hr), excluding background, in accordance with [NEW RULE VI](1)(b);

(b) TENORM waste entering the system does not exceed a concentration of 200 picocuries per gram (pCi/g) of combined radium Ra-226 and Ra-228 determined by the waste characterization requirements in [NEW RULE VI](1)(d);

(c) the average concentration in a TENORM waste unit does not exceed 50 pCi/g of combined radium Ra-226 and Ra-228 in accordance with [NEW RULE VI](1)(l); and

(d) the total effective dose equivalent (TEDE) contributed by the TENORM waste management system does not exceed 100 millirem per year (mrem/y), excluding background radiation, for a hypothetical member of the public who is at the boundary continuously with no shielding for a year, as monitored in accordance with [NEW RULE VI](1)(m).

(2) TENORM surface-contaminated objects are not subject to the waste characterization requirement in (1)(b), but must not exceed a gate screening level of 100 microrentgen per hour (μ R/hr), excluding background radiation, in accordance with [NEW RULE VI](1)(b).

(3) Before accepting a load of TENORM waste, the owner or operator of a TENORM waste management system shall:

(a) obtain a manifest from the transporter that includes the following:

(i) name of generator(s) or aggregator(s);

- (ii) address of generator(s) or aggregator(s);
- (iii) vehicle license number;
- (iv) name of transporter;
- (v) name of driver;
- (vi) transporter's company address;
- (vii) transporter's company phone number;
- (viii) transporter's email address;
- (ix) identification of the source location(s), volume, physical state, and type;
- (x) date and time of the delivery of the waste;
- (xi) identification of the process(es) producing the waste;
- (xii) method of receipt; and
- (xiii) waste characterization results.

(b) ensure that the TENORM waste has been characterized in compliance with [NEW RULE VI](1)(d).

(4) The owner or operator of a TENORM waste management system shall conduct additional testing of other constituents of the waste stream if the department determines the additional testing is necessary to protect human health and the environment.

(5) The owner or operator of a TENORM waste management system shall conduct random inspections to ensure that incoming loads of filter media do not exceed 200 pCi/g, excluding background radiation.

(6) If a random inspection detects an exceedance of the limit in (5), the owner or operator shall reject the load.

(7) If a person attempts to deliver for disposal TENORM waste exceeding the gate screening limit in (1)(a) or the concentration limit in (1)(b), the owner or operator of the TENORM waste management system shall:

- (a) refuse to accept the waste;
- (b) record the source, amount, name of the generator, and other identifying information about the rejected waste; and
- (c) notify the department and generator in writing with the information in (b) within 24 hours after waste rejection.

(8) If the owner or operator of a TENORM waste management system or the department determines that the combined average concentration of 50 pCi/g in a TENORM waste unit has been exceeded, or that the TEDE limit of 100 mrem/y, excluding background radiation, assessed at the licensed boundary has been exceeded, the owner or operator shall:

(a) within 5 days after the determination, or notification by the department, place a notice in the operating record indicating the exceedance; and

(b) within 15 days after the determination or notification by the department, submit for department approval a corrective action plan and follow the closure and post-closure care requirements of [NEW RULE VIII] if determined necessary by the department to protect human health and the environment.

(9) The corrective action plan required in (8)(b) must:

(a) include corrective measures that will enable the TENORM waste management system to meet the requirements in (1)(c) and (d); and

(b) establish a department-approved timeframe on a case-by-case basis for implementing the proposed corrective action plan.

(10) The owner or operator of a TENORM waste management system may not allow disposal of bulk or non-containerized liquid waste.

(11) A person may dispose of TENORM waste that exceeds a limit in (1)(a) or (b) only in a disposal facility licensed to receive waste that exceeds one or both of those limits.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: The department is proposing a multi-layered protective approach in setting TENORM waste management limits. In deciding to follow this approach, the department analyzed scientific studies, evaluated public feedback, and consulted with regulators, health physicists, and waste management professionals. The department concluded that the multi-layered approach to waste acceptance and monitoring is within the established protective levels for management of this waste stream. This multi-layered approach, in combination with operational safeguards provided in this subchapter and the requirements for Class II solid waste management systems under ARM Title 17, chapter 50, subchapters 4, 5, 10, 11, 12, 13, and 14, except for ARM 17.50.1109 and 17.50.1404(2)(a), are protective of human health and the environment. Examples of operational safeguards provided in this subchapter are: daily cover requirements, prohibitions, design and siting criteria, operation and maintenance plans, ground water monitoring, closure and post-closure care requirements, financial assurance, and spill reporting requirements.

Some states have taken a singular approach, only having a concentration limit as the primary waste management tool. The department's proposed approach would allow for the acceptance and safe disposal for various types of TENORM waste, which are difficult to characterize by conventional methods. While knowing the concentration of TENORM waste is important, it is the exposure to, and the dose received by, a person that are significant when managing TENORM waste. Therefore, the department is proposing limits on dose and exposure, in addition to concentration to protect human health.

The department is proposing (1)(a) to ensure TENORM waste that exceeds a gate screening level of 200 $\mu\text{R/hr}$ is not disposed of in a TENORM waste management system. Individual loads that exceed the proposed gate screening level of 200 $\mu\text{R/hr}$ will, in most circumstances, exceed the concentration limits set forth in (1)(b). Having a gate screening limit adds a threshold layer of protection to the public.

The health physicist retained by the department to help develop the proposed rules provides the following example to support an exposure limit of 200 $\mu\text{R/hr}$ (0.2 mR/hr): assuming the net surface exposure rate of the object is 185 $\mu\text{R/hr}$ = 0.185 mR/hr and the background is 15 $\mu\text{R/hr}$ (average background in Montana is 2 to 7 $\mu\text{R/hr}$), then the total measured exposure rate of the object plus the background would be 200 $\mu\text{R/hr}$. The worker is assumed to be at least 0.5 m from the source, except for the worker's hands and arms. The reduction in exposure rate with distance from the source depends on the geometry of the source. A factor of two would be a conservative distance factor. Therefore, the estimated exposure rate at

the worker's body attributable to the source would be one-half the net surface exposure rate or 0.098 mR/hr. A worker is not likely to spend a significant amount of time handling loads at the maximum screening level. Assuming 200 hours per year at an exposure rate of 0.098 mR/hr, the annual exposure from these loads would be 19.6 mR. Also, assuming 1 mR exposure gives a dose of 1 mrem, the estimated annual dose would be 19.6 mrem, which is well below the total dose exposure limit of 100 mrem/y.

The department is proposing (1)(b) to ensure that waste exceeding the upper limit for radioactivity of TENORM waste in incoming loads is not accepted at a TENORM waste management system. Setting an upper concentration limit allows flexibility while providing reasonable assurance that the combined radium concentration does not exceed 50 pCi/g in the TENORM waste unit. It also provides a reasonable basis for assuming that the gate exposure screening limit of 200 microroentgen per hour (μ R/hr), excluding background radiation will not be exceeded. Monitoring, waste characterization results, and accurate recordkeeping will ensure that the 50 pCi/g concentration limit in place is maintained. The department is proposing that TENORM waste management systems report to the department the combined radium concentration in a TENORM waste unit on a quarterly basis (every 3 months per year). A gate screening limit of 200 μ R/hr will assist in identifying and excluding loads that may exceed 200 pCi/g combined radium.

As stated earlier, the department requested technical expertise from Tetra Tech to assist and provide guidance in developing these rules. To help provide rationale for setting 200 pCi/g as an upper limit for TENORM, Tetra Tech used the exposure factors for the natural uranium and thorium decay series from Draft NUREG 1506 (NRC, "Measurement Methods for Radiological Surveys in Support of New Decommissioning Criteria," 1995). To help readers understand the calculations below, one milliroentgen, abbreviated "mR" is one-thousandth of a roentgen. One microroentgen, abbreviated "uR" is one-millionth of a roentgen.

The methods use an exposure rate conversion factor of 0.0019 milliroentgens per hour (mR/h) per pCi/g for U-238 and its decay products in equilibrium. Over 95 percent of the external dose comes from the decay products of Ra-226, primarily lead-214 (Pb-214) and bismuth-214 (Bi-214). The conversion factor for Th-232 and its decay products is 0.00283 mR/hr per pCi/g Th-232 (NRC, 1995). A combined conversion factor assuming 25 percent Ra-228 and 75 percent Ra-226 would be approximately 0.0021 mR/hr per pCi/g combined radium. These conversion factors assume that the decay products are in equilibrium with the parent radium isotope.

Based upon Draft NUREG 1506, Tetra Tech made the following calculations: the expected exposure rate at the surface of a shipment at 200 pCi/g combined radium at 25 pCi/g Ra-228 and 75 pCi/g Ra-226 would be approximately 0.22 mR per hour. Assuming a geometry factor of 50 percent, a worker might receive an external radiation exposure of 0.11 mR in one hour of handling the material. The radiation exposure rate decreases with distance from a finite source since a receptor would only intercept (receive) a fraction of the radiation emitted from the source. This fraction is known as the "geometry factor." While the geometry factor would vary with the distance of the receptor (worker) from the source, a reasonable average value would be approximately 50 percent. Assuming an exposure of 1 mR

results in a dose of approximately 1 mrem, the external radiation dose to a worker would be approximately 0.11 mrem. This calculation assumes that the decay products are in equilibrium with the radium isotopes.

The U.S. Department of Energy developed RESRAD (RESidual RADioactivity) computer software to evaluate the radiation doses and risks to the public from residual radioactive materials. The RESRAD software uses pathway analysis to evaluate radiation dose and associated risks, and to derive cleanup criteria or authorized limits for radionuclide concentrations in the contaminated source medium. RESRAD is widely used by regulatory agencies, the risk assessment community, and universities in more than 100 countries around the world.

Based on the results of a dose analysis using RESRAD, nearly all of the dose to a worker at a TENORM waste management system would be due to direct gamma radiation. The calculated external dose from 200 pCi/g combined radium would be, on average, about 0.42 mrem in an hour. This is below the NRC dose limit for members of the public.

Therefore, the department is proposing 200 pCi/g as the upper concentration limit because it is protective of human health. In addition, a higher concentration limit helps discourage illegal dumping and facilitates proper management of TENORM waste in a TENORM waste management system. The department's data for the last six years indicates that the majority of incoming TENORM loads are lower than 50 pCi/g. Therefore, an occasional high load should provide reasonable confidence that the 50 pCi/g average in-place concentration limit will not be exceeded. A TENORM waste management system would not be able to regularly accept loads close to 200 pCi/g, but would be able to accept a load over 50 pCi/g, periodically without exceeding the in-place concentration limit.

To be protective of human health and the environment, the department is proposing 50 pCi/g as the combined concentration limit within the waste unit in proposed (1)(c.) The potential dose from TENORM is proportional to a person's exposure time and radionuclide concentration of the material. The Tetra Tech report provided the following rationale for 50 pCi/g as the concentration limit for a TENORM waste unit: assuming a worker spends no more than 50 percent of his or her time managing TENORM and that the mix of radionuclides includes Thorium-232 (Th-232) at a ratio not greater than 25 percent of the total concentration, Ra-226 plus Ra-228 concentration less than 50 pCi/g is likely to be protective. This would also meet the TEDE limit of 100 mrem/y assuming that a hypothetical member of the public is at the boundary continuously with no shielding for a year as monitored in accordance with New Rule VI(1)(m). Tetra Tech recommended establishing a default acceptance threshold. Daily cover requirements and dust control would minimize exposure to the TENORM waste management system workers, who are at more risk than the public, and thereby minimize exposure to the public.

The proposed TEDE limit in (1)(d) is based upon scientific standards set by experts in the field of health physics. Equipment would take continuous measurements at the licensed boundary. Dose would be calculated using inputs assuming a hypothetical member of the public is at the boundary continuously with no shielding for a year. This information will be used by the TENORM waste management system and the department to determine compliance with the total

gamma dose rate limit.

Scientific studies, recommendations, and guidelines support the proposed TEDE limit. Congress requested EPA to contract with the National Academy of Sciences (NAS) to conduct a study examining the basis for EPA's guidance on TENORM. The following report was prepared: "Evaluation of EPA's Guidelines for Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM) Report to Congress" (June 2000) available at <https://www.epa.gov/radiation/tenorm-resources> or by contacting DEQ's Solid Waste Program at (406) 444-5300. According to this report, the effective dose (or risk) is based on radiation type (e.g., alpha, beta, gamma), its energy and, for internal radiation, sensitivity of specific organs (page 7).

The NAS committee also found that it is widely accepted to use a linear, no-threshold dose-response relationship at low levels of exposure. Important factors to consider are: the physical characteristics of a site, the extent of the TENORM source, and the projected land use. The NAS committee recommended to the EPA that it should use dose and risk assessments that are "reasonably realistic" for developing exposure standards to the various types of TENORM. The committee defined "reasonably realistic" as "not intended to greatly overestimate or underestimate actual effects for the exposure situation of concern" (page 15). EPA agreed with this recommendation in the report.

CRCPD's Environmental Nuclear Council (E-42) Task Force Report "Review of TENORM in the Oil & Gas Industry" (June 2015) (CRCPD's TENORM Report) discusses methods of dose and risk assessments for assumed reference conditions that are reasonable. The report is available at https://cdn.ymaws.com/www.crcpd.org/resource/collection/89CD4979-9A4C-41AF-8832-2F1EA116A8C0/E-42_Report_Review_of_TENORM.pdf or by contacting DEQ's Solid Waste Program at (406) 444-5300. The report states that volumes and concentrations are not the basis for estimating the potential public dose. The report points out that the exposure pathway is critical in determining exposure potential. The report also discusses how the practice of adding fill and cover material significantly reduces the concentration of any TENORM waste disposed at a waste management system. In addition, the report concludes that with the proper monitoring and maintenance of TENORM facilities, the potential for worker and public exposure in the present and into the future is minimized (page 59).

Tetra Tech's report also explains that millirems (mrem) are the units used to quantify radiation doses to humans. The report states, "The dose unit represents the amount of energy absorbed in human tissue, the distribution of the energy, and the sensitivity of the whole body or individual organs to radiation" (page 5). Potential long-term human health risk is assessed based upon the dose received by a person and is measured in mrem. People living in the United States receive natural background radiation doses from approximately 200 mrem/y to more than 1,000 mrem/y in high background locations primarily in the Rocky Mountain region (Tetra Tech Report, 2016). Approximately 310 mrem/y is the average natural background radiation dose for people living in the United States (Ionizing Radiation Exposure of the Population of the United States. National Council on Radiation Protection and Measurements (NCRP) Report No. 160, page 22, NCRP, 2009).

The American National Standards Institute (ANSI), in conjunction with the

Health Physics Society, developed a standard, "Control and Release of Technologically Enhanced Naturally Occurring Radioactive Material (TENORM)," ANSI/HPS N13.53-2009 (ANSI 2009). This standard makes the following recommendations: annual dose limit of 100 mrem above background from all pathways and sources of radioactivity (except radon and its short-lived decay products) and practices associated with site and facility operations, and an annual dose limit for non-workers of 100 mrem/y.

For comparison, the maximum allowable radiation dose for a radiation worker at a nuclear power plant, uranium mill, or another facility licensed by the NRC is 5,000 millirem per year (mrem/y) (10 CFR 20.1201); and the maximum allowable radiation dose to a member of the public from one of these NRC licensed facilities or an Agreement State is 100 mrem/y (except uranium mills), excluding background and medical radiation doses (10 CFR 20.1301).

The CRCPD Suggested State Regulations Part N - Sec. N.5 Standards for Radiation Protection for Members of the Public (2014) discusses how protecting the public from TENORM radiation is essentially the same as for other radioactive materials. CRCPD recommends 100 mrem/y as the maximum dose, above background levels, for members of the public. The recommendation for sites to be released for unrestricted use is based on a combination of the 25 mrem/y dose limit and a limit on radium concentrations in soil.

Furthermore, Tetra Tech's report recommends that the dose limit for a member of the public living near an operating TENORM waste management system the TEDE should be no greater than 100 mrem/y, excluding background. Tetra Tech's report makes this recommendation based upon the same dose limit for members of the public in NRC regulations governing radiation dose limits for individual members of the public at 10 CFR 20.1301. Also, guidance documents issued by the International Atomic Energy Agency "Radiation Protection and the Management of Radioactive Waste in the Oil and Gas Industry" (Safety Report Series No. 34, IAEA, 2003), the International Commission on Radiological Protection (ICRP) Publication 60 "Recommendations of the International Commission on Radiological Protection," (Ann. ICRP 21(1-3), 1991), the National Council on Radiation Protection and Measurements, "Ionizing Radiation Exposure of the Population of the United States" (NCRP Report No. 160, 2009) and ANSI "ANSI/HPS N13.53-2009" support the same dose limit.

The department is proposing a more stringent gate-screening level in (2) for TENORM surface-contaminated objects, excluding filter media. This material is difficult to characterize in a standard manner that is protective of human health. Cutting up objects, such as pipe, to make them available for waste characterization techniques, can lead to increased human exposure to radionuclides. Therefore, the department is proposing instead to subject them to a more stringent gate-screening level than other types of TENORM waste.

The department is proposing (3)(a) to require manifests from each transporter to enable the TENORM solid waste management system owner or operator, and the department, to track where the waste came from and how it was produced. This would ensure that the TENORM waste management system and the department are aware of the source, amount, generator, and other identifying information about the rejected waste in a timely manner. The proposed rule enables the department to

take enforcement actions if necessary.

The department is proposing (3)(b) to require an owner or operator to ensure that TENORM waste has been properly characterized. This would allow the owner or operator to make an accurate determination of the concentration level in the waste. If the waste concentration exceeds the limit in (1)(b), the owner or operator is required to reject the material. This would protect public health and the environment.

The department is proposing (4) to provide the department the ability to require additional testing based upon different waste streams to protect human health and the environment. It is reasonably necessary to provide the department with the discretion to require additional testing based on the unique characteristics of a specific waste stream.

The department is proposing (5) to ensure that filter media is accurately characterized and documented and that random inspections take place to ensure that incoming loads of filter media do not exceed 200 pCi/g, excluding background radiation. Random load screening of filter media will ensure that generators are accurately characterizing and documenting the concentration of their loads. Filter media is of special concern due to its potential to have higher radionuclide concentrations than other waste.

The department is proposing (6) to encourage generators or transporters to properly characterize filter media through random testing by having the consequence of loads being rejected if they fail the random testing.

The department is proposing (7) to ensure that TENORM waste management systems do not accept TENORM waste exceeding the screening exposure limit in (1)(a) or the concentration limit in (1)(b). If the waste exceeds one of those limits, the department is proposing to require an owner or operator to notify the department of the waste's source and other identifying information. This may aid in ensuring that the waste is properly disposed of by the generator or transporter, and in potential enforcement cases. The department has enforcement authority under Title 75, chapter 10, part 2, MCA.

The department is proposing (8) to require an owner or operator to inform the department of exceedances of the combined average concentration limit in (1)(c) or the dose limit in (1)(d) and to submit a corrective action plan. The department is also proposing (8) to make sure corrective action takes place and that materials responsible for the exceedance are removed and properly disposed of. As an added safety measure and in response to public comments, the department is also proposing requiring a TENORM waste management system to comply with closure and post-closure requirements in New Rule VIII if deemed necessary. The department agreed with public comments asserting the department should have the ability to require a TENORM waste management system to close and to comply with closure and post-closure care requirements if necessary to protect human health.

The department is proposing (10) to restrict the disposal of bulk or non-containerized liquid waste to protect water resources.

The department is proposing (11) to ensure TENORM waste exceeding the limits is disposed of in an appropriate facility to protect human health and the environment. Currently, there are no facilities in Montana that accept TENORM waste with levels exceeding the limits in the proposed rules. The department will

work with the regulated community on providing information where waste that exceeds the limits in the proposed rules can be disposed. Currently, that information would include the location of and contact information for facilities in neighboring states that are licensed to take such waste.

NEW RULE IV TENORM WASTE MANAGEMENT SYSTEM LICENSE AND APPLICATION REQUIREMENTS

(1) A person may not construct, expand, or operate a TENORM waste management system after [the effective date of this rule] without first obtaining a TENORM waste management system license from the department in compliance with ARM Title 17, chapter 50, subchapters 4 and 5 and this subchapter.

(2) An applicant for a TENORM waste management system license shall use the application form provided by the department. In addition to the information required under ARM 17.50.508, the applicant shall provide the following information:

(a) a document signed by the landowner that grants access to the property to the department, private contractors, and the waste management system owner/operator to perform activities associated with regulation and operation of the TENORM waste management system;

(b) technical design specifications;

(c) construction plans;

(d) a detailed site plan that includes:

(i) information concerning any material that will be used to construct a liner or berm, including but not limited to:

(A) type, quantity, and source of waste to be accepted;

(B) compaction density;

(C) moisture content;

(D) design permeability;

(E) liner construction quality assurance and quality control (QA/QC) plans;

(ii) design and location of any proposed storage or treatment areas;

(iii) design and location of any liquid containment or storage structures;

(iv) design, location, and grades of any surface water diversion and drainage structures;

(v) an operation and maintenance plan that complies with [NEW RULE VI];

(vi) a ground water monitoring plan that complies with [NEW RULE VII]; and

(vii) a closure plan and a post-closure care plan that complies with [NEW RULE VIII].

AUTH: 75-10-204, MCA

IMP: 75-10-204, 75-10-221, MCA

REASON: It is reasonably necessary to require persons to obtain from the department a license to operate a TENORM waste management system as required in proposed (1). Requiring the person to obtain a license facilitates the department's regulation of the disposal and management of TENORM waste, which presents different risks to human health and the environment than other solid waste. The license must comply with the licensing requirements, annual reporting requirements, and fee schedule set forth in ARM Title 17, chapter 50, subchapter 4. The license

must also comply with ARM Title 17, chapter 50, subchapter 5, which includes disposal facility classifications, application requirements, operation and maintenance plan requirements, solid waste management system license application procedures, appeal procedures for the denial or revocation of a license, duration of a license, inspections, and financial assurance requirements. Finally, the TENORM waste management system license must comply with the provisions of this proposed subchapter.

The department is proposing (2) to require, in a TENORM license application, information in addition to that required under ARM 17.50.508. More information is required for a TENORM system to ensure technical design, construction plans, site plans, operation and maintenance plans, ground water monitoring plans, and closure plans are done in a manner that is protective of human health and the environment given the nature of the material to be disposed.

NEW RULE V DESIGN CRITERIA (1) An application for a TENORM waste management system license must contain a system design that complies with:

- (a) ARM Title 17, chapter 50, subchapter 10;
- (b) ARM Title 17, chapter 50, subchapter 12; and
- (c) requirements of the Montana Pollutant Discharge Elimination System (MPDES) general storm water permit approved by the department's Water Protection Bureau.

(2) The design must also include an appropriate number and placement of dose measuring devices as determined by a health physicist.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: It is reasonably necessary to set forth design criteria for TENORM waste management systems as proposed in (1) to ensure protection of human health and the environment. The design criteria in (a) include location criteria set forth in ARM Title 17, chapter 50, subchapter 10. Subchapter 10 contains restrictions on siting a landfill near airports, floodplains, wetlands, fault areas, seismic areas, unstable areas, and other location restrictions. Subchapter 10 also contains requirements to protect public and private drinking water supply systems, sensitive hydrogeological environments, and endangered or threatened plants, fish, and wildlife from potential negative impacts associated with solid waste disposal.

The design criteria in (b) also includes the design requirements applicable to Class II landfills set forth in ARM Title 17, chapter 50, subchapter 12. Under subchapter 12, the design must (a) ensure that the concentration values of constituents listed in ARM 17.50.1204 will not be exceeded in the uppermost aquifer; or (b) use a composite liner and a leachate collection and removal system that maintains less than a 30-cm (12 inches) depth of leachate over the liner.

Finally, the design criteria in (c) must be consistent with the requirements of the storm water permit approved by the department. TENORM waste management systems would be required to work with the department's Water Protection Bureau to obtain a storm water permit and develop a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP must include best management practices, quarterly

inspections, and sampling after significant storm events. TENORM waste management systems would be required to divert storm water away from waste and prevent it from comingling with waste.

The department is proposing (2) to ensure that the design of the TENORM waste management system includes the appropriate number and placement of monitoring devices determined by a health physicist. A health physicist will have the expertise to determine the number and location of the monitoring devices needed to ensure that the TEDE of 100 mrem/y is not exceeded at the facility boundary.

NEW RULE VI OPERATION AND MAINTENANCE (1) An application for a TENORM waste management system license must contain an operation and maintenance plan that complies with ARM Title 17, chapter 50, subchapters 5 and 11, excluding ARM 17.50.1109, and that includes:

- (a) types of wastes that will be accepted;
- (b) procedures and equipment that accurately measure radiation exposure that will be used for gate screening;
- (c) procedures for onsite sampling and testing;
- (d) procedures for waste characterization that:
 - (i) comply with "Requirements for the Characterization of TENORM Wastes" Montana DEQ – Solid Waste Program (Revised August 2019); and
 - (ii) state how results must be recorded, utilized, and maintained;
- (e) documentation of exposure rates measured onsite at the time of delivery in accordance with [NEW RULE III](1)(a);
- (f) procedures for rejecting waste;
- (g) procedures for dust monitoring and control;
- (h) an inventory of radiation survey equipment;
- (i) calibration procedures for radiation detection and monitoring equipment and documentation of calibration records, including:
 - (i) annual calibration for radiation detection and monitoring instruments done by a laboratory licensed by an agreement state or NRC; and
 - (ii) daily source and background check procedures for radiation detection and monitoring equipment, as appropriate;
- (j) a radiation health and safety plan developed by a health physicist to provide onsite facility knowledge necessary to comply with the requirements of this subchapter and protect public health;
- (k) provisions to minimize noise impacts on residential areas to the degree practicable through berms, vegetation screens, and reasonable limits on hours of operation;
- (l) procedures developed by a health physicist for monitoring of TENORM concentrations in a TENORM waste unit. The operation and maintenance plan must provide that the concentrations be reported to the department quarterly;
- (m) provisions developed by a health physicist for continuous monitoring of ionizing radiation dose at the licensed boundary. The monitoring must demonstrate the dose a hypothetical person would receive if the person were at the boundary continuously with no shielding for a year;
- (n) procedures to protect the integrity of the liner from objects that could compromise it, such as large bulky items; and

(o) procedures for random inspections of incoming loads and rejection procedures for incoming loads that do not meet the acceptance criteria.

(2) The owner or operator of a TENORM waste management system shall:

(a) file an annual report, as required by ARM 17.50.410(1)(b), that includes a statement about whether the concentration limit in [NEW RULE III](1)(c) has been maintained; and

(b) submit to the department within 45 days after the end of each calendar quarter a report on TENORM waste delivered during that quarter. The report must contain the following:

(i) the date of delivery of each load of TENORM waste during the quarter or a notation that no TENORM waste was delivered during the quarter;

(ii) if a load was rejected, the date of attempted delivery, the source of the delivery, and the reason for rejection;

(iii) the type of waste and waste characterization results; and

(iv) readings taken at the licensed boundary in accordance with (1)(m);

(c) make gate-screening documentation available to the department for inspection during normal business hours or as requested;

(d) cover the waste by the end of each operating day with at least six inches of clean and compacted soil or an alternative daily cover that has been approved by the department under ARM 17.50.1104;

(e) construct, maintain, and operate a TENORM waste management system in conformance with the requirements of this subchapter, the operation and maintenance plan, and all other plans approved by the department; and

(f) maintain records required in this subchapter in accordance with ARM 17.50.1112 and make them available for inspection by the department during business hours or as requested.

(3) The owner or operator of a TENORM waste management system may not accept TENORM waste unless the owner or operator has designed, constructed, and maintained:

(a) a run-on control system to divert storm water to prevent flow of storm water onto the active portion of the landfill during the peak discharge from a 24-hour, 100-year storm;

(b) a system to control run-off from the active portion of the landfill by collecting and controlling at least the water volume resulting from a 24-hour, 100-year storm; and

(c) a system to manage storm water run-off in accordance with ARM 17.50.1110(1).

(4) The owner or operator of a TENORM waste management system shall monitor storm water ponds annually for constituents and parameters determined by the department to be appropriate based on the waste stream accepted.

(5) If monitoring in (4) detects an exceedance of a constituent or parameter, the owner or operator of a TENORM waste management system shall notify the department's Water Protection Bureau and implement necessary corrective actions.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: The department is proposing New Rule VI to establish the requirements for a TENORM waste management system's operation and maintenance plan. It is necessary to require a TENORM waste management system to submit a more detailed operation and maintenance plan than is required for a Class II facility due to the unique nature of the waste stream. Every waste management system's operation and maintenance plan must be site-specific, must meet the minimum operation and maintenance standards, and must be approved by the department on a case-by-case basis.

The department is proposing (1) to include the requirements of ARM Title 17, chapter 50, subchapter 5. Subchapter 5 provides uniform standards governing the storage, treatment, recycling, recovery, and disposal of solid waste. Subchapter 5 also has provisions for operation and maintenance plans, appeals of a denial or revocation of a license, inspections, closure, post-closure care, and financial assurance requirements.

The department is proposing (1) to also include the requirements of ARM Title 17, chapter 50, subchapter 11. Subchapter 11 sets forth operating requirements, such as procedures for the exclusion of hazardous waste, air criteria, run-on and run-off control systems, surface water requirements, liquid restrictions, deed notation, and general liability insurance.

Proposed (1) requires that the owner or operator to include waste information and radiation monitoring procedures that will allow the department to determine whether an operation and maintenance plan is adequate and to ensure that the limits and restrictions in New Rule III will be met. Under ARM 17.50.509(1), the department reviews each operation and maintenance plan as part of its review of a license application. An operation and maintenance plan outlines the requirements necessary to protect human health and the environment. The department requires operation and maintenance plans to take a comprehensive approach for operation and maintenance of TENORM waste management systems and compliance with applicable rules.

The department is proposing (1)(a) through (c) to ensure that each TENORM waste management system is evaluated on a case-by-case basis. The operation and maintenance plan must include the types of wastes, procedures for gate screening, types of equipment and manufacturing certification, and methods and procedures for onsite sampling and testing.

The department is proposing (1)(d) to ensure that procedures for waste characterization are uniformly performed in accordance with "Requirements for the Characterization of TENORM Wastes" Montana DEQ – Solid Waste Program, which is being incorporated into these rules by reference in New Rule I. The department is proposing using waste characterization guidance that will allow for emerging technologies that can accurately characterize different forms of TENORM waste.

The department is proposing different requirements for determining the acceptability of TENORM surface-contaminated objects than for other types of TENORM waste. Proposed (1)(d) does not address characterization of TENORM surface-contaminated objects because it may be difficult to obtain accurate results using standard concentration waste characterization methods for those objects. Instead, a more stringent gate-screening level for TENORM surface-contaminated objects is proposed in New Rule III(2). See reason statement for New Rule II(34)

and New Rule III(2). The department is also proposing to require the owner or operator to state how the waste characterization results must be recorded, utilized, and maintained so the department can review these records during inspections.

The department is proposing (1)(e) to require the owner or operator to document exposure rates to ensure that the department is aware of exceedances so it can require corrective action. The department needs documentation for compliance assistance and potential enforcement actions that may be taken under Title 75, chapter 10, part 2, MCA.

The department is proposing (1)(f) to ensure that proper procedures are in place for rejecting waste to protect human health and the environment.

The department is proposing (1)(g) to require dust monitoring and control measures to protect human health by limiting public exposure to windblown radionuclide particles.

The department is proposing (1)(h) and (i) to ensure accurate radiation measurements and that the department is able to check that proper calibration procedures are being followed. Annual calibration done by a licensed laboratory is required to ensure instruments accurately take measurements. Daily calibrations are necessary to check that the instruments continue to take proper readings.

The department is proposing (1)(j) to require TENORM waste management systems to have a health and safety plan developed by a health physicist. The proposed rule requires the owner or operator to tailor the plan to the risk associated with the specific TENORM waste management system. A radiation health and safety plan reinforces ALARA.

The department is proposing (1)(k) to minimize noise impacts on surrounding neighborhoods from facility operations and waste hauling.

The department is proposing (1)(l) to ensure that accurate TENORM concentrations in a TENORM waste unit are measured and reported to the department quarterly. This would protect public health and the environment by making sure that the owner or operator takes necessary steps to limit concentrations to the level allowed in New Rule III(1)(c). The reasons for this concentration is explained in the statement of reasonable necessity for that rule.

The department is proposing (1)(m) in accordance with NRC's Regulatory Guide 8.37 ALARA Levels for Effluents from Materials Facilities (NRC, 1993, available at <https://www.nrc.gov/docs/ML0037/ML003739553.pdf> or by contacting DEQ Solid Waste at (406) 444-5300). NRC's regulatory guide states that licensees must perform surveys and monitoring sufficient to demonstrate compliance with the requirements of 10 CFR 20.1302, which concerns compliance with dose limits for individual members of the public. NRC's regulatory guide also states that the surveys should include air and liquid effluent monitoring, as appropriate, as well as surveys of direct or external dose rates in unrestricted areas.

Proposed (1)(m) requires an owner or operator to accurately perform environmental monitoring and surveys of ionizing radiation dose to be able to demonstrate whether the TENORM waste management system meets the TEDE limit in New Rule III(1)(d).

The direct radiation dose can be measured using dosimeters, such as thermoluminescence dosimeters (TLDs) or optically stimulated luminescence dosimeters (OSLs), at the boundary of the TENORM waste management system.

The dosimeter accumulates dose continuously. The dosimeter is analyzed and the dose reported periodically, generally on a calendar quarter basis. Subsection (1)(m) would require a quarterly report of the dose that a person would receive if he or she were at the location for the entire quarter (three months or 2,190 hours) with no shielding (i.e., outdoors all of the time).

The department is proposing to require quarterly reporting to inform the department of the TENORM waste management's system compliance with the TEDE limit in New Rule III(1)(d). If the TENORM waste management system is not in compliance with New Rule III(1)(d), then the necessary corrective actions outlined in New Rule III(8) must be implemented. Compliance with the total dose, including the dose from internally deposited radionuclides (primarily inhaled dust and radon decay products), must be assessed at the monitoring stations using standard dose conversion factors.

The department is proposing (1)(n) to ensure that a landfill liner is protected from damage by large or bulky items, such as equipment and metallic pipe, to protect the environment by preventing the integrity of the liner from being compromised.

The department is proposing (1)(o) to ensure that the TENORM waste management system has procedures for randomly checking incoming loads for prohibited materials and filter media due to the potential for higher concentration levels in the waste stream. The department is also proposing to require rejection procedures to ensure the TENORM waste management system does not accept prohibited materials.

The department is proposing (2)(a) through (c) to ensure that proper reporting of waste concentration, waste characterization, waste rejection, environmental monitoring readings, and gate-screening documentation is submitted to the department. The submittal of the above information provides documentation to the department that the TENORM waste management system is following all the requirements in its operation and maintenance plan.

The department is proposing (2)(d) to require six inches of daily cover to reduce the potential for excess radiation exposure and to reduce potential inhalation or ingestion. This is in accordance with a recommendation in Tetra Tech's report "Development of TENORM Rules for the State of Montana" (December 2016). It is also in accordance with ARM 17.50.1104(1), which requires an owner or operator of a Class II landfill to cover disposed-of solid waste with six inches of earthen material at the end of each operating day. To provide flexibility for TENORM management systems, the department is proposing to allow the use of alternative daily cover that has been approved by the department under the process in ARM 17.50.1104(2). That rule allows approval of an alternative daily cover if it does not pose a threat to human health or the environment.

Radiation from TENORM waste is mainly in the form of alpha and beta particles, as well as gamma radiation. Alpha particles are essentially the same as helium nuclei and consist of two protons and two neutrons. Alpha particles are not able to penetrate very far in solid material. A piece of paper or human skin is able to stop penetration of alpha particles. However, alpha particles may cause cellular damage if they are ingested or inhaled. Beta particles, which are identical to electrons, are less hazardous than alpha particles. Gamma rays, which are

essentially the same as x-rays, are much more penetrating. Six inches of packed soil cover over TENORM containing only Ra-226 will reduce the gamma radiation level by about a factor of four (Schiager, 1974, "Analysis of Radiation Exposures on or Near Uranium Mill Tailings Piles. Radiation Data and Reports, Vol. 15, No. 7, Environmental Protection Agency Office of Radiation Programs"). Based on the RESRAD analysis, using the probable mix of radionuclides including Ra-228, six inches of soil will reduce the exposure rate by a factor of about five. Proper landfilling of TENORM waste, such as requiring daily cover and other protective measures, will reduce the potential for excess radiation exposure to members of the public.

TENORM poses a radiation health risk not only from direct radiation exposure, but also from inhalation or ingestion. Daily cover of TENORM waste in a landfill reduces potential inhalation or ingestion. To protect human health, environmental monitoring will detect potential dose exceedances. Therefore, the proper landfilling of TENORM waste, such as requiring daily cover, dust monitoring, and dust control, minimizes the potential dose associated with radionuclides. The addition of cover soil provides an additional barrier to direct gamma radiation exposure from TENORM waste.

The department is proposing (2)(e) to require an owner or operator to construct, maintain, and operate a TENORM waste management system in conformance with the requirements of this subchapter as well as the operation and maintenance plan and any other plans approved by the department. Imposition of this affirmative obligation enables the department to take enforcement action in the event the owner or operator fails to comply with the requirements of this subchapter.

The department is proposing (2)(f) to ensure that records are maintained in accordance with ARM 17.50.1112 and made available for inspection by the department during business hours.

The department is proposing (3) to be more protective of surface water given the nature of material subject to this subchapter. ARM 17.50.1109 currently applies to Class II landfills and requires a run-on control system to prevent storm water flow onto the active portion of the landfill during the peak discharge from a 25-year storm; and a run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. To be more protective than ARM 17.50.1109, (3) requires the owner or operator of a TENORM waste management system to install a run-on control system to prevent storm water flow onto the active portion of the landfill during the peak discharge from a 100-year storm. It also requires a run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 100-year storm. This is more protective than ARM 17.54.1109 because the run-on and run-off control systems will be able to manage higher volumes of water.

The department is proposing (3)(c) to require owners and operators to manage storm water run-off in an environmentally protective manner in accordance with the department's solid waste surface water requirements for a Class II landfill. The department is proposing that a TENORM waste management system comply with the surface water requirements in ARM 17.50.1110. A TENORM waste management system may not cause a discharge of a pollutant into state waters that violates the Montana Water Quality Act, including a Montana pollutant discharge

elimination system, or ARM Title 17, chapter 30, subchapter 13. In addition, a TENORM waste management system may not discharge from a nonpoint source of pollution to waters of the United States, including wetland, that violates any requirement of an area-wide or statewide water quality management plan that has been approved under 33 USC 1288 or 1329.

The public expressed concern about possible contamination in storm water ponds. Based on public comments received, the department is proposing in (4) to require the owner or operator to test storm water for constituents or parameters based on the waste stream. Owners and operators would be required to obtain a storm water permit from the department's Water Protection Bureau, which regulates discharges of storm water, and to develop a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP would include best management practices, quarterly inspections, and sampling after significant storm events. TENORM waste management systems must divert storm water and prevent it from comingling with waste.

The department is proposing in (5) to require an owner or operator to take corrective action measures if there are exceedances of limits in the storm water ponds to protect human health and the environment. The department is also proposing to require the owner or operator to notify the department's Water Protection Bureau of any exceedances because this bureau is responsible for the management of storm water.

NEW RULE VII GROUND WATER MONITORING (1) An application for a TENORM waste management system license must contain a ground water monitoring plan that complies with ARM Title 17, chapter 50, subchapter 13; and contain a ground water sampling and analysis plan tailored to the types of TENORM waste being managed and site-specific conditions.

(2) During the active life of the waste management system and the closure and post-closure periods, a TENORM waste management system owner or operator shall have an independent qualified ground water scientist conduct semiannual monitoring for all constituents and parameters required in the ground water sampling and analysis plan and this rule.

(3) During the first semiannual monitoring event, a minimum of four independent samples must be collected from each background and downgradient well and analyzed in accordance with this rule.

(4) During subsequent semiannual monitoring events, a minimum of one sample must be collected from each background and downgradient well and analyzed in accordance with this rule.

(5) If the department determines that monitoring at an increased frequency is necessary to protect human health or the environment and notifies the owner or operator, the owner or operator shall monitor at the frequency determined by the department.

(6) The owner or operator of the TENORM waste management system shall monitor ground water for the constituents listed in ARM 17.50.1306 for Class II and Class IV landfills, the constituents in Table 1 of this rule, and any other constituent for which the department determines monitoring is necessary to protect public health or the environment.

Table 1
Ground Water Monitoring Constituents

Regulated Radionuclide	Exceedance Concentrations Above Background Radiation
Gross alpha (excluding uranium and radon)	15 pCi/L
Combined Ra-226 and Ra-228	5 pCi/L
Uranium	30 micrograms per liter (µg/L)

(7) If monitoring detects results in an exceedance for any constituent identified in the ground water sampling and analysis plan and this rule, the owner or operator of the TENORM waste management system shall implement an assessment monitoring program and take corrective action under ARM Title 17, chapter 50, subchapter 13.

AUTH: 75-10-204, MCA

IMP: 75-10-204, 75-10-207, MCA

REASON: The department is proposing (1) to make the ground water monitoring requirements for Class II facilities applicable to TENORM waste management systems. Compliance with ARM Title 17, chapter 50, subchapter 13, by TENORM waste management systems is necessary to ensure ground water monitoring is done properly and, if any exceedances are found, that the proper actions are taken to protect human health and the environment.

Hydrogeologic and soil characterization aids the system's and the department's hydrogeologist to evaluate the effectiveness of the ground water monitoring systems. Tailoring the ground water monitoring plan to the specific waste stream and site conditions will ensure that the proper ground water constituents are monitored on a case-by-case basis.

The department is proposing (2) to remove any perceived or real bias with ground water sampling. The department received public comments that expressed a concern that samples taken by an owner or operator might not be representative of the true quality of the ground water at a TENORM waste management system. In response to those concerns, the department is proposing to require an independent third-party qualified ground water scientist to conduct ground water sampling. This would eliminate the possibility of any bias of an owner or operator that could affect the results of ground water monitoring.

The department is proposing semiannual monitoring because it provides the data required to detect exceedances caused by seasonal changes in contaminant movement resulting from changes in ground water volume or direction of flow. However, the department may require increased monitoring frequency if necessary to protect human health and the environment. If additional testing demonstrates that corrective measures are necessary, the TENORM waste management system would be responsible for selecting a remedy and submitting it to the department for its review and approval, and then implementing a corrective action plan.

The department is proposing (3) and (4) to require, during the first semiannual sample event, a minimum of four independent samples be collected from each background and downgradient well and analyzed. This first semiannual sampling is necessary to establish site-specific background levels. During subsequent semiannual sampling events, an independent third-party must collect a minimum of one sample from each background and downgradient well. The department will ensure that the semiannual events capture seasonal variability.

The department is proposing (5) to give the department the authority to require more frequent ground water sampling and analysis. The department is proposing to require more frequent sampling in special circumstances, such as to investigate a possible release from the waste unit. In addition, ground water monitoring must continue during the closure and the post-closure care periods.

The department is proposing (6) to require ground water monitoring of specific radioactive constituents associated with TENORM in addition to the contaminants required to be monitored at all Class II and Class IV landfills under ARM Title 17, chapter 50, subchapter 13. The exceedance concentrations in Table 1 are incorporated from EPA's regulations at 40 CFR 141.66, which implement the federal Safe Drinking Water Act, and Montana's maximum contaminant levels for radionuclides in drinking water, which are found in ARM 17.38.206(1). The department is proposing to use drinking water standards to be conservative and protective of human health. The department may determine that it is necessary to monitor other constituents based upon the waste stream accepted.

The department is proposing (7) to require assessment monitoring and corrective action measures if detection monitoring indicates an exceedance of ground water standards, which include standards for radioactive constituents. These requirements are necessary to ensure protection of public health and the environment. In addition to the constituents in Table 1, the owner or operator must sample for constituents listed in a site-specific, department-approved ground water sampling and analysis plan.

NEW RULE VIII CLOSURE AND POST-CLOSURE CARE REQUIREMENTS

(1) An application for a TENORM waste management system license must contain closure and post-closure plans that comply with ARM Title 17, chapter 50, subchapter 14, except for ARM 17.50.1404(2)(a), and that include:

- (a) an estimated timeline and methods for closure and post-closure;
- (b) procedures for removal of any remaining TENORM wastes that have not been disposed of, and final disposal location;
- (c) procedures for equipment removal, including any necessary equipment decontamination and remediation procedures, and final disposal that is protective of human health and the environment;
- (d) closure of site buildings and appurtenances;
- (e) a process for soil sampling and analysis to identify potential areas of soil contaminated by system operations;
- (f) procedures for excavation and removal or remediation of stained or contaminated soil, with confirmation sampling procedures and analysis to demonstrate that human health and the environment is being protected; and
- (g) a proposed final closure date.

(2) Prior to the commencement of closure activities, the owner or operator of a TENORM waste management system shall submit a Notice of Intent to Close to the department.

(3) The owner or operator of a TENORM waste management system shall complete closure activities as described in the closure plan within 180 days after submittal of the Notice of Intent to Close.

(4) The owner or operator of a TENORM waste management system shall comply with any other post-closure care requirements determined by the department to be necessary to protect human health or the environment.

(5) Design of the final cover for a TENORM waste management system must ensure that, immediately after closure, the TEDE from all TENORM radionuclides does not exceed 25 mrem/y, excluding background radiation, at the licensed boundary.

(6) The owner or operator of a TENORM waste management system shall ensure that the limit in (5) is met immediately after closure.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: The department is proposing (1) to make the closure requirements for Class II facilities in ARM Title 17, chapter 50, subchapter 14 applicable to TENORM waste management systems. Class II facilities include the most protective controls of any category of solid waste management system to ensure the continued protection of human health and the environment. Subchapter 14 also covers closure deadlines and post-closure care requirements. ARM 17.50.1404(1) establishes a 30-year post-closure period for Class II landfills that the department may extend under ARM 17.50.1404(2). The department is proposing that TENORM waste management systems not be subject to ARM 17.50.1404(2)(a), which allows the department to shorten the 30-year post-closure period for solid waste management systems. This would ensure that the post-closure period for a TENORM management system is a minimum of 30 years. After 30 years, the department will re-evaluate the post-closure period and will increase it if necessary to protect human health and the environment.

Section (1) also adds requirements for closure and post-closure plans specific to TENORM waste management systems to address public concerns regarding human health and the environment. Specifically, (1) requires a timeline for closure, procedures for removing any remaining TENORM waste that has not been disposed of, equipment removal procedures, plans for closing site buildings and appurtenances, soil sampling and analysis, procedures for removing contaminated soil and associated confirmation sampling procedures and analysis, and a final closure date. These additional requirements would help ensure that closure and post-closure care of a TENORM waste management system provide a high level of protection.

The department is proposing (2) and (3) to require notice to the department of the date the TENORM waste management system plans to close so the appropriate fees can be assessed and a schedule can be set for the system to comply with the requirements in ARM Title 17, chapter 50, subchapter 14. Subchapter 14 sets the

time limit for meeting closure requirements of 180 days after the department has approved the closure and post-closure care plans based on the department's experience with waste system closures over the last 30 or more years. Closure within 180 days is reasonable and achievable while protecting human health and the environment.

The department is proposing (4) to require an owner or operator to comply with other requirements determined by the department to be necessary to protect health or the environment. This is necessary because site-specific concerns may not be foreseen or addressed in the TENORM waste management system license. The department needs the flexibility to impose other requirements if justified by health or environmental concerns.

The department is proposing (5) and (6) based upon scientific research. The Conference of Radiation Control Program Directors (CRCPD) recommends that sites released for unrestricted use meet the 25 mrem/y dose limit and the limit for radium concentrations in the soil. The American National Standards Institute (ANSI) standard N13.53 recommends an annual dose rate of 25 mrem/y above background from residual radioactivity (except radon and its short-lived decay products) from remediated land and facilities that have been released for unrestricted use. NRC sets a dose limit of 25 mrem/y for facilities released for unrestricted use (10 CFR 20.1402). Using 25 mrem/y for these rules is a conservative limit because, under current solid waste rules, closed solid waste management systems are not released to unrestricted use. The department believes that 25 mrem/y is an appropriate limit both to ensure continuity with other regulatory limits for unrestricted use and to ensure public health and the environment are protected.

NEW RULE IX FINANCIAL ASSURANCE (1) The owner or operator of a TENORM waste management system shall comply with the requirements of ARM 17.50.540 concerning financial assurance for Class II landfills.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The department is proposing New Rule IX to require TENORM waste management systems to submit financial assurance under ARM 17.50.540, which is modeled after municipal solid waste landfill financial assurance requirements set forth in 40 CFR Part 258. Requiring TENORM waste management systems to submit financial assurance is reasonably necessary to ensure proper operation, closure, and post-closure care of the TENORM waste management system in the event the owner or operator becomes financially incapable or otherwise fails to do so.

NEW RULE X TENORM SPILL REPORTING REQUIREMENTS (1) A person who transports TENORM waste for processing or disposal shall comply with this rule.

(2) A person who transports TENORM waste shall comply with ARM 17.50.523.

(3) A person who spills TENORM waste shall, no later than 24 hours after the

spill occurs, report the spill to the Montana Disaster and Emergency Services at (406) 324-4777.

(4) Notification to the National Response Center may be required by other authority. The National Response Center may be reached at 800-424-8802.

(5) Nothing in this subchapter excuses compliance with permits, rules, or regulations of other state, local, or federal agencies.

(6) A person who spills one cubic yard or more of TENORM waste shall properly and expeditiously manage, contain, and remove all spills of TENORM wastes.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: The department is proposing this rule to establish spill reporting requirements for transporters of TENORM waste to ensure protection of human health and the environment.

The department is proposing (2) to require transporters of TENORM waste to cover and secure their loads and keep loads covered and secure while in transit in a manner that prevents discharge, dumping, or spilling from the transport vehicle.

The department is proposing (3), (4), and (5) to ensure transporters of TENORM waste report spills in a timely manner to the Montana Disaster and Emergency Services and other entities that may need to be notified. Montana Disaster and Emergency Services is the lead coordinator for comprehensive emergency management in Montana and provides quantifiable risk analysis and emergency response and recovery for communities.

The department is proposing (6) to require owners or operators to clean up spills to protect human health and the environment. Section (6) is modeled after the requirements in Montana DEQ's Spill Management and Reporting Policy (June 2015). The department is using its own Spill Management and Reporting Policy as a model to be consistent across the department when dealing with spills. A copy of this policy can be found at:

<https://deq.mt.gov/Portals/112/DEQAdmin/ENF/Documents/Reports/SpillPolicy.pdf> or by contacting the department's solid waste program at (406) 444-5300.

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 Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., October 21, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil;

asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

7. Norm Mullen, attorney for the department, has been designated to preside over and conduct the hearings.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BY: /s/ Shaun McGrath
SHAUN MCGRATH
Director

Certified to the Secretary of State August 13, 2019.

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to use of clinical) PROPOSED ADOPTION
resource licensed practical nurses)

TO: All Concerned Persons

1. On September 13, 2019, at 10:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing no later than 5:00 p.m., on September 6, 2019, to advise us of the nature of the accommodation that you need. Please contact Missy Poortenga, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or nurse@mt.gov (board's e-mail).

3. The proposed new rule is as follows:

NEW RULE I USE OF CLINICAL RESOURCE LICENSED PRACTICAL NURSES (CRLPN) (1) A clinical resource licensed practical nurse (CRLPN) is an LPN with an unencumbered Montana nursing license who provides supervision, demonstration, and collaborative evaluation of practical nursing student performance with skilled care long-term care patients.

(a) A CRLPN is required to have at least two years of experience within the past five years in a skilled care long-term care setting (this does not include experience in assisted living settings or independent living settings).

(2) CRLPNs may be used to enhance, but not replace, faculty-directed clinical learning experiences. The supervising faculty member is responsible for all students in the clinical setting, including those supervised by CRLPNs. The maximum number of nursing students a CRLPN may supervise at any one time is eight.

(3) The CRLPN is solely responsible for students and must have no concurrent clinical responsibilities.

(4) When using CRLPNs, faculty members remain responsible for:

(a) assuring that assigned duties are appropriate to the CRLPN scope of practice;

(b) ensuring safe, accessible, and appropriate supervision based on client health status, care setting, course objectives, and student level of preparation;

- (c) the lecture, clinical, and laboratory portions of a course, including actively teaching in the course for which the clinical experience is assigned; and
- (d) performing the summative clinical evaluation based on individual course objectives and student clinical performance.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, 37-8-302, MCA

REASON: At the January 2019 meeting of the board's rules task force, a nursing program director requested that the task force consider creating a clinical resource licensed practical nurse (CRLPN) rule similar in nature to the clinical resource registered nurse rule currently in place (ARM 24.159.666). This was requested because program directors and faculty are registered nurses and do not always possess the expertise in role and scope that is necessary to teach practical nursing students in the long-term care setting. The rules task force met and discussed the specifics of this role in a practical nursing program on April 10, 2019, and made a recommendation to the full board at the July 10, 2019, meeting. Noting the purpose of the CRLPN is to conduct the clinical rotation for practical nursing students in long-term care facility settings only, the board determined it is reasonably necessary to adopt this new rule to clearly establish CRLPN qualifications and provisions for their supervision of practical nursing students.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., September 20, 2019.

5. An electronic copy of this notice of public hearing is available at nurse.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

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

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

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will not significantly and directly impact small businesses.

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

9. Missy Poortenga, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
SHARON SWEENEY FEE, PHD, RN, CNE
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 August 13, 2019.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.301.109 definitions,	)	PROPOSED AMENDMENT
24.301.131 incorporation by reference)	
of International Building Code,)	
24.301.138 calculation of fees,)	
24.301.142 modifications to the)	
International Building Code applicable)	
only to the department's code)	
enforcement program, 24.301.146)	
modifications to the International)	
Building Code applicable to both the)	
department's and local government)	
code enforcement programs,)	
24.301.154 incorporation by reference)	
of International Residential Code,)	
24.301.171 incorporation by reference)	
of International Existing Building Code,)	
24.301.172 incorporation by reference)	
of International Mechanical Code,)	
24.301.173 incorporation by reference)	
of International Fuel Gas Code,)	
24.301.175 incorporation by reference)	
of International Swimming Pool and)	
Spa Code, 24.301.181 incorporation by)	
reference of International Wildland-)	
Urban Interface Code, 24.301.201)	
extent of local programs, 24.301.203)	
funding of code enforcement program,)	
24.301.208 incorporation by reference)	
of Independent Accountant's Reporting)	
Format for Applying Agreed-Upon)	
Procedures During Audits of Certified)	
City, County, or Town Building Code)	
Enforcement Programs, 24.301.301)	
incorporation by reference of Uniform)	
Plumbing Code, 24.301.351 minimum)	
required plumbing fixtures, 24.301.401)	
incorporation by reference of National)	
Electrical Code, 24.301.511 definitions,)	
24.301.514 enforcement generally, and)	
24.301.904 site accessibility)	

TO: All Concerned Persons

1. On September 16, 2019, at 9:30 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 9, 2019, to advise us of the nature of the accommodation that you need. Please contact Timothy Lloyd, Building and Commercial Measurements Bureau, 301 South Park Avenue, P.O. Box 200517, Helena, MT 59620-0517; telephone (406) 841-2053; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; or e-mail buildingcodes@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The Building and Commercial Measurements Bureau, Business Standards Division, Department of Labor and Industry (department) determined it is reasonably necessary to amend certain administrative rules to adopt and incorporate by reference new editions of numerous nationally recognized building codes, with stated exceptions. The department is also proposing additional amendments through the rules to coincide with the adoption and incorporation by reference of these building codes.

While code companies generally update building codes every three years, the department did not adopt the 2015 versions. After holding additional listening sessions to address numerous stakeholder concerns with the 2012 codes, the department adopted the 2012 editions in late 2014 which was very close to the publishing of the 2015 codes. Additionally, the department received a great deal of feedback from the 2012 listening sessions and a subsequent stakeholder survey that the codes change too often, and suggestions for a five-year adoption cycle. After reviewing the 2015 codes for necessary changes, the department decided to forgo adopting those editions.

On July 9, 2019, the department consulted the Building Codes Council (council) regarding the proposed adoption of the new 2018 editions of the nationally recognized building codes, with stated exceptions. The council is appointed by the Governor and assists the department in attempting to harmonize building codes with the needs of the construction industry and the public interest in efficiency, cost-effectiveness, and safety. 50-60-115, MCA. The council generally approved the department's proposed adoption and incorporation of new editions of nationally recognized building codes and the stated exceptions. Any proposed rule changes that were not supported by the council will be noted in the specific reasonable necessity statements following the rule(s). Additionally, any proposed rule changes specifically requested by the council will also be noted in the corresponding statements of reasonable necessity.

A majority of the department's proposed changes reflect only renumbering of sections or tables of the updated codes without substantive changes to the rule. Other changes are proposed to improve readability, such as implementing acronyms rather than using the full names of adopted codes, referencing the Department of Labor and Industry as the "department," and substituting "Building Codes Bureau"

with the correct term of "Building and Commercial Measurements Bureau." See ARM 24.1.101 Organization of Department of Labor and Industry.

No significant and direct impact will occur to small businesses as these proposed updated standards and codes are frequently improved, modified, clarified, and renumbered to better reflect activity within the building industry.

Additional grammatical and numbering changes are necessary to comply with ARM formatting requirements following other rule amendments. The department is also amending several rules throughout to add the current web site addresses of building codes publishers to contact or obtain code information online. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

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

24.301.109 DEFINITIONS (1) and (1)(a) remain the same.

(b) "IBC" means the International Building Code, ~~2012~~ 2018 edition.

(c) "IMC" means the International Mechanical Code, ~~2012~~ 2018 edition.

(d) "IFGC" means the International Fuel Gas Code, ~~2012~~ 2018 edition.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASON: The department is updating the edition dates in these definitions to align with the proposed adoption of the 2018 codes elsewhere in this notice.

24.301.131 INCORPORATION BY REFERENCE OF INTERNATIONAL BUILDING CODE (1) The department adopts and incorporates by reference the International Building Code, ~~2012~~ 2018 edition, unless another edition is specifically stated, together with Appendix Chapter C (Group U - Agricultural Buildings).

(2) remains the same.

(3) A copy of the IBC may be obtained from the ~~Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, 301 South Park, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by contacting the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or on their web site at www.ICCsafe.org.~~

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASON: The department is amending (3) as the department no longer provides copies of the IBC. The official version of the IBC is available via the ICC's web site.

24.301.138 CALCULATION OF FEES (1) through (7) remain the same.

(8) A copy of the "Building Valuation Data" table may be obtained free of charge from the Department of Labor and Industry, Building Codes and Commercial Measurements Bureau, P.O. Box 200517, 301 South Park, Helena, MT 59620-0517.

TABLE 109.2 remains the same.

AUTH: 50-60-104, 50-60-203, MCA

IMP: 50-60-103, 50-60-104, 50-60-203, MCA

24.301.142 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE
APPLICABLE ONLY TO THE DEPARTMENT'S CODE ENFORCEMENT
PROGRAM (1) through (4) remain the same.

(5) Subsection 107.1 of the IBC is amended to read as follows: "Submittal documents consisting of construction documents, statement of special inspections, geotechnical report, and other data shall be submitted ~~in one set with each permit application~~ electronically or on paper no larger than 11 by 17 inches. The construction documents shall be prepared by a registered design professional as required by specific provisions throughout the International Building Code (IBC) as adopted by the department in ARM 24.301.131. The department is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with the IBC as adopted by the department."

(6) through (10) remain the same.

AUTH: 50-60-203, MCA

IMP: 50-60-107, 50-60-108, 50-60-109, 50-60-203, 50-60-212, MCA

REASON: The department is amending (5) to update requirements for submission of documents and align with current technology and processes. Over the past 12 to 18 months, the department has shifted to electronic submissions and limiting document page size to accommodate the equipment utilized for scanning and housing the electronic records.

24.301.146 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE
APPLICABLE TO BOTH THE DEPARTMENT'S AND LOCAL GOVERNMENT
CODE ENFORCEMENT PROGRAMS (1) through (5) remain the same.

(6) Subsection 101.4.7 is amended by the addition of the following sentence: "ARM 24.301.171 allows the provisions of either the International Building Code or the International Existing Building Code to be used for the remodel, repair, alteration, change of occupancy, addition, and relocation of an existing building."

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

(8) Subsection 107.2.8 is amended to delete "Section 3112" and replace it with "Section 3113."

(7) remains the same but is renumbered (9).

(10) Section 116, Unsafe Structures and Equipment, is deleted in its entirety.

(8) and (9) remain the same but are renumbered (11) and (12).

~~(40)~~ (13) Subsection 903.3.5, Inadequate Water Supply, is amended by addition of the following: "This subsection shall apply to buildings which are required by the International Building Code to be provided with an automatic fire extinguishing system and do not have access to an existing multiple user water supply system,

such as a municipal water supply system or a private community water supply system, capable of providing the water supply requirements of National Fire Protection Association Standard for the Installation of Sprinkler Systems, ~~2010~~ 2016 edition (NFPA 13). Under such circumstances, water storage requirements may be modified by the building official. The modified design shall include sufficient storage onsite to operate the hydraulically remote area for the response time of the local fire department. Response time is the time from alarm to the time the fire department can apply water to the fire. Response time shall be established by the use of the formula $T = 6.5 \text{ minutes (mobilization time)} + 1.7 \text{ minutes/mile } D \text{ (travel time)}$, where T is response time, in minutes, and D is distance, in miles, from the fire station to the building. The modified water supply shall be sufficient to operate the system for the response time calculated above but not be less than 20 minutes. Water supply requirements shall be established by using the area/density method as defined in NFPA 13. A reduction in water storage of up to 50 percent, but not less than that required for a 20-minute supply is allowed. All automatic fire sprinkler system designs and components shall be in compliance with NFPA 13. When a modified water storage is allowed, the automatic fire sprinkler system must be equipped with a flow alarm, digital alarm communicator transmitter, and a fire department connection. The automatic fire sprinkler system shall be monitored by an approved central station in accordance with NFPA 72, National Fire Alarm Code, ~~2010~~ 2016 edition."

(11) and (11)(a) remain the same but are renumbered (14) and (14)(a).

(i) Installation of Sprinkler Systems: NFPA 13 Standard for the Installation of Sprinkler Systems, ~~2010~~ 2016 edition.

(ii) Installation of Sprinkler Systems in Group R Occupancies Four Stories or Less: NFPA 13R Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, ~~2010~~ 2016 edition.

(b) Standpipe Systems: NFPA 14 Standard for the Installation of Standpipe and Hose Systems, ~~2010~~ 2016 edition.

(c) Notwithstanding any other provisions or references to the contrary within the NFPA standards or fire code as referenced in (5), the authority having jurisdiction over any fire protection system required by the International Building Code shall be the building official. The building official may delegate this authority to governmental fire agencies organized under Title 7, chapter 33, MCA, that are approved by the Department of Justice, Fire Prevention and Investigation Section, to adopt and enforce a fire code in their fire service area.

(12) remains the same but is renumbered (15).

(16) Subsection 1006.3.3, Single Exits, item 4, is amended to read: "4. Group R-3 and R-4 occupancies shall be permitted to have one exit or access to a single exit if equipped throughout with an automatic sprinkler system or there are no sleeping rooms above or below the level of the exit discharge."

(~~13~~) (17) Subsection ~~1018.1~~ 1020.1 is amended by addition of the following: "Upgrading of corridors in existing E occupancies serving an occupant load of 30 or more, may have walls and ceilings of not less than one-hour fire-resistive construction as required by this code. Existing walls surfaced with wood lathe and plaster in good condition or 1/2-inch gypsum wallboard or openings with fixed wired glass set in steel frames are permitted for corridor walls and ceilings and occupancy

separations when approved. Doors opening into such corridors shall be protected by 20-minute fire assemblies or solid wood doors not less than 1 3/4 inches (45 mm) thick. Where the existing frame will not accommodate the 1 3/4-inch-thick door, a 1 3/8-inch-thick solid bonded wood-core door or equivalent insulated steel door shall be permitted. Doors shall be self-closing or automatic closing by smoke detection. Transoms and openings other than doors from corridors to rooms shall comply with this code or shall be covered with a minimum of 3/4-inch plywood or 1/2-inch gypsum wallboard or equivalent material on the room side. Exception: Existing corridor walls, ceilings, and opening protection not in compliance with the above may be continued when such buildings are protected with an approved automatic sprinkler system throughout. Such sprinkler system may be supplied from the domestic water system if it is of adequate volume and pressure."

~~(14)~~ (18) For "R" occupancies that are exempt from the requirements of a fire sprinkler system, pursuant to ARM 24.301.146~~(12)~~ (15), Table 4048.4 1020.1, referenced in subsection ~~4048.4 1020.1~~, shall be amended by the deletion of the language "Not Permitted" under the heading "Required Fire-Resistive Rating (hours) – Without sprinkler system" for "R" occupancies with an occupant load served by corridor of greater than ten. Under that same location where "Not Permitted" is to be deleted, the language "1" shall be inserted instead, which will require those corridors to have one-hour fire-resistive ratings.

(19) Subsection 1030.1 is amended as follows: "General. In addition to the means of egress required by this chapter, emergency escape and rescue openings shall be required in all sleeping rooms in Group R occupancies located in buildings that do not have an automatic sprinkler system and in the following occupancies:"

(15) through (18) remain the same but are renumbered (20) through (23).

(24) Subsection 3001.2, Emergency elevator communication equipment systems for the deaf, hard of hearing, and speech impaired, shall become effective on January 1, 2021.

(19) remains the same but is renumbered (25).

(20) ~~(26)~~ Delete Section 3109 in its entirety and replace with the International Swimming Pool and Spa Code, 2015 2018 edition as adopted in ARM 24.301.175.

(21) through (35) remain the same but are renumbered (27) through (41).

(42) All references to the "International Plumbing Code" shall be deleted and replaced with "Uniform Plumbing Code."

(43) All references to the "International Property Maintenance Code" shall be deleted.

(44) All references to the "Sewage Disposal Code" shall be deleted.

AUTH: 50-60-203, MCA

IMP: 50-60-101, 50-60-102, 50-60-104, 50-60-201, 50-60-203, 50-60-205,
MCA

REASON: The department is adding (6) because Chapter 34, regarding Existing Structures, was removed from the IBC. The former sections in Chapter 34 now appear in the International Existing Building Code (IEBC). Either the IBC or IEBC can be applied to the remodel, repair, alteration, change of occupancy, addition, and relocation of an existing building.

The department is adding (8) to correct an internal citation error in the IBC.

It is reasonably necessary to delete Section 116, Unsafe Structures and Equipment, of the IBC, because Title 50, chapter 60, MCA, regarding building and construction standards does not apply to existing buildings and equipment that become unsafe.

The department is amending (13), (14)(a)(i), (14)(a)(ii), and (14)(b) to adopt by reference the updated 2016 editions of several National Fire Protection Association standards.

The department is amending (14)(c) to allow building officials to delegate the authority to review plans for, inspect, and approve fire protection systems under the IBC to certain governmental fire agencies to adopt and enforce a fire code in their fire service area. Building officials enforce the state building code through plan review, permitting, and inspections and have jurisdiction regarding new construction, significant remodel/alteration, and/or changes in use or occupancy. Governmental fire agencies enforce the state fire code through inspections and have jurisdiction regarding existing buildings to assure that such buildings are maintained and operated in a manner that preserve the fire safety features such as exiting, smoke detection, and alarm systems. See Title 50, chapter 61, part 1, MCA. While governmental fire agencies may have authority under NFPA 13 and/or the state fire code to review design and construction of buildings, the standards applied by the governmental fire agencies must not conflict with building regulations adopted by the department and are not effective unless approved by the department. 50-3-103(1)(a) and (2), MCA. The amendments will clarify that the building official has jurisdiction over any fire protection system required by the IBC but, recognizing that the affected governmental fire agency has significant knowledge about and interest in the fire protection system, the building official may choose to delegate authority to review plans, inspect, and approve the fire protection system to the governmental fire agency in the fire service area.

The department is adding (16) to amend the IBC at Subsection 1006.3.3, Single Exits, item 4, to allow R-3 and R-4 occupancies to have one exit or access to a single exit. Because (15) requires R-3 and R-4 occupancies in the IBC to have approved automatic sprinkler systems, the department concluded the number of exits can be reduced.

The department is adding (19) to amend the IBC at Subsection 1030.1, General Requirements Pertaining to Emergency Escape and Rescue. The department determined it is reasonably necessary to require emergency escape and rescue openings in all sleeping rooms in buildings without an automatic sprinkler system for the enhanced safety of the building occupants.

The department is adding (24) to delay the effective date of 2018 IBC Subsection 3001.2, Emergency elevator communication equipment systems for the deaf, hard of hearing, and speech impaired, until January 1, 2021. Based on information the department received in listening sessions, the change in elevator communication equipment is significant and additional time is needed to comply.

The department is amending (26) to reference the updated 2018 edition of the International Swimming Pool and Spa Code (ISPSC).

It is reasonably necessary to add (42) and delete all references to the "International Plumbing Code" in the IBC and replace them with "Uniform Plumbing

Code." The Uniform Plumbing Code has consistently been adopted in Montana. ARM 24.301.301. Because the IBC references the International Plumbing Code in several chapters, it is necessary to specify the application of the Uniform Plumbing Code in this rule.

The department is adding (43) to delete all references to the "International Property Maintenance Code" in the IBC. Because the code is referenced in several IBC chapters, the department determined it is reasonably necessary to specify the inapplicability of the International Property Maintenance Code in this rule.

The department is adding (44) to delete all references to the "Sewage Disposal Code" in the IBC and specify the inapplicability of the code as it is referenced in several IBC chapters.

24.301.154 INCORPORATION BY REFERENCE OF INTERNATIONAL RESIDENTIAL CODE (1) remains the same.

(2) The ~~Department of Labor and Industry~~ department adopts and incorporates by reference the International Residential Code, 2012 2018 Edition, referred to as the International Residential Code or IRC-, together with:

(a) Appendix Q, Tiny Houses. Appendix Q may be adopted by a certified city, county, or town building code jurisdiction. Tiny houses do not meet the building code requirements for commercial or business occupancy and are therefore prohibited for these types of uses. The department will apply Appendix Q to factory-built buildings which meet the definition of a tiny house as having 400 square feet or less in floor area excluding lofts, and which are intended to be mounted on a permanent foundation and used as a single-family dwelling.

(b) Appendix S, Strawbale Construction. Appendix S may be adopted by a certified city, county, or town building code jurisdiction. The department shall not apply or enforce Appendix S.

(3) through (5) remain the same.

(6) Subsection ~~302.2, Townhouses, delete the exception and replace with the following: "A common two-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts, or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Electrical installations shall be installed in accordance with the adopted electrical code. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4."~~ 302.2.2, Common walls, delete "Chapters 34 through 43" and replace with "the adopted electrical code in ARM Title 24, chapter 301, subchapter 4."

(7) remains the same.

(8) through (12) remain the same but are renumbered (9) through (13).

(13) remains the same but is renumbered (16).

(14) Subsection R403.1.1, Minimum size, is modified to add the following: "Exception: The building official may allow footings to be designed in accordance with Section R403 of the 2012 IRC or may allow footings engineered by a design professional."

(14) remains the same but is renumbered (15).

(15) ~~(8)~~ Subsection 504.3 R302.13, Fire Protection of Floors, is deleted in its entirety.

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

(17) ~~(18)~~ Subsection 602.10.11 R602.10.10, Cripple Wall Bracing, ~~delete the last sentence and replace with the following~~ add the following sentence: "The distance between adjacent edges of braced wall panels shall be 20 feet."

(18) ~~(19)~~ Subsection 703.8 R703.4, Flashing, delete the first paragraph in its entirety and replace with the following: "Flashing shall be provided in accordance with this section to prevent entry of water into the wall cavity or penetration of water to the building structural framing components. Flashing shall extend to the surface of the exterior wall finish or to the water-resistive barrier for drainage and shall be installed at all of the following locations:"

Further, delete Number "1", number "1.1", number "1.2", and number "1.3" in their entirety and replace with the following: "1. Exterior window and door openings."

Number "2" through "7" remain unchanged in Subsection ~~R703.8~~ R703.4.

(19) ~~(20)~~ Add new subsection as follows: "~~R703.8.1~~ R703.4.1, Flashing Materials. Approved flashing materials shall be corrosion-resistant. Self-adhered membranes used as flashing shall comply with AAMA 711. Pan Flashing shall comply with ~~Section R703.8.2~~ Subsection R703.4.2. Installation of flashing materials shall be in accordance with ~~Section 703.8.3~~ Subsection R703.4.3."

(20) ~~(21)~~ Add new subsection as follows: "~~R703.8.2~~ R703.4.2, Pan Flashing. Pan Flashing installed at the sill of exterior window and door openings shall comply with this section. Pan Flashing shall be corrosion-resistant and shall be permitted to be pre-manufactured, fabricated, formed, or applied at the job site. Self-adhered membranes complying with AAMA 711 shall be permitted to be used as Pan Flashing. Pan Flashing shall be sealed or sloped in such a manner as to direct water to the surface of the exterior wall finish or to the water-resistive barrier for subsequent drainage."

(21) ~~(22)~~ Add new subsection as follows: "~~R703.8.3~~ R703.4.3, Flashing Installation. Installation of flashing materials shall be in accordance with one or more of the following methods:

1. The fenestration manufacturer's installation and flashing instructions.
2. The flashing manufacturer's installation instructions.
3. Flashing details approved by the Building Official.
4. As detailed by a Registered Design Professional."

(22) ~~(23)~~ Appendices do not apply to a certified city, county, or town building code jurisdiction unless specifically authorized or adopted by the department and adopted by the certified city, county, or town building code jurisdiction.

(23) ~~(24)~~ A copy of the International Residential Code may be obtained from the ~~Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, 301 South Park, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795~~ at www.ICCsafe.org.

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-201, 50-60-203, MCA

REASON: The department has received inquiries regarding applicability of the state building code to tiny houses and determined there is a significant amount of interest by both private industry and municipalities in constructing tiny houses. Appendix Q, regarding tiny houses, first appears in the 2018 International Residential Code (IRC) and establishes standards for construction of single-dwelling units of 400 square feet or less in floor area excluding lofts. The compact size of tiny houses has necessitated modified standards such as lower ceiling heights in lofts and modified dimensions of stairs or ladders used to reach lofts. Tiny houses do not meet building code requirements for commercial or business occupancy and therefore are prohibited from such use.

The department has received inquiries from private industry and consumers regarding strawbale construction methods in the state building code. In strawbale construction, baled straw is used for structural elements and/or building insulation. Appendix S in the 2018 IRC establishes the standards for construction of exterior and interior walls, both structural and nonstructural, using baled straw.

To stay current and address these inquiries, the department is amending (2) through (2)(b) to adopt and incorporate by reference the 2018 edition of the IRC and certain relevant appendices.

The department is amending (6) to remove unnecessary duplicative text because the 2018 IRC at Subsection 302.2, Townhouses, is now substantially similar to the proposed deletion. The amendment to Subsection 302.2.2, Common walls, is necessary to specify the adopted electrical code instead of other 2018 IRC chapters the department is not adopting.

It is reasonably necessary to add (14) and permit the building official having jurisdiction to allow building footings that comply with Subsection R403.1 of the 2012 IRC or building footings that have been engineered by a design professional (instead of complying with Section R403 in either the 2012 IRC or the 2018 IRC). The 2012 IRC is currently in effect and allowing continued compliance with Subsection R403.1 is not a substantial change. Considering the varying soil types and snow loads throughout Montana and the complexity of the new tables in Section R403 of the 2018 IRC, the exception is necessary to allow building officials to avoid requiring larger footings than necessary and significantly increasing the cost of construction.

The department is amending (18) through (22) solely to correctly reference the subsections of the 2018 IRC. The substances of the rules have not changed.

The department is amending (23) to clarify that the 2018 IRC appendices do not apply to a local building code jurisdiction unless specifically authorized or adopted by the department and adopted by the local jurisdiction. The department consistently receives inquiries regarding the local jurisdictions' ability to adopt code appendices. Following discussion with the council, the department concluded that it is reasonably necessary to amend this rule to address the questions and alleviate confusion among the local building code jurisdictions.

24.301.171 INCORPORATION BY REFERENCE OF INTERNATIONAL EXISTING BUILDING CODE (1) The department adopts and incorporates by reference the International Existing Building Code (IEBC), ~~2012~~ 2018 edition, which may be used as an alternate prescriptive method(s) for the remodel, repair, alteration, change of occupancy, addition, and relocation of existing building.

(a) through (3) remain the same.

(4) A copy of the IEBC may be obtained from the ~~Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, 301 South Park, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by contacting the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or on their web site at www.ICCSafe.org.~~

AUTH: 50-60-203, MCA

IMP: 50-60-103, 50-60-201, 50-60-203, MCA

24.301.172 INCORPORATION BY REFERENCE OF INTERNATIONAL MECHANICAL CODE (1) The department adopts and incorporates by reference the International Mechanical Code, ~~2012~~ 2018 edition, published by the International Code Council, unless another edition is specifically stated, together with the following amendments:

(a) remains the same.

(b) All references to the International Plumbing Code shall be deleted and replaced with the Uniform Plumbing Code.

(b) through (f) remain the same but are renumbered (c) through (g).

(g) (h) Table 403.3 403.3.1.1 is amended by the addition of a footnote "i". Footnote "i" is to be referenced in the table at, "Private Dwellings, Single and Multiple". The footnote at the end of the table should be as follows: "i. Every dwelling unit shall have installed a minimum 100 CFM exhaust fan controlled by either an automatic timer or humidistat. Structures built to the provisions of the International Residential Code may provide mechanical ventilation per Section ~~M1507~~ M1505 of the International Residential Code."

(i) Subsection 307.3, Condensate pumps, is modified by adding the following exception at the end: "Exception: A water sensor with audio alarm may be substituted for an appliance/equipment disconnect to allow for continued operation of the appliance/equipment."

(j) Subsection 506.5.2, Pollution-control units, is amended to state as follows: "506.5.2 Pollution-control units. When pollution-control units are required by the authority having jurisdiction, the installation shall be in accordance with the manufacturer's installation instructions and all of the following:"

(k) Subsection 1101.10, Locking access port caps, is modified by adding the following: "This subsection shall not apply to single-family dwellings."

(2) The Building Codes and Commercial Measurements Bureau shall not enforce the IMC in buildings exempted from state building codes by 50-60-102, MCA. Cities, counties, and towns that have made the state building regulations applicable to buildings exempt from state enforcement, except for mines and buildings on mine property regulated under Title 82, chapter 4, MCA, may enforce within their jurisdictional areas the International Mechanical Code as adopted by those units of government.

(3) through (5) remain the same.

(6) The IMC adopted by reference in (1) is a nationally recognized model code setting forth minimum standards and requirements for certain mechanical installations. A copy of the IMC may be obtained from the ~~Department of Labor and~~

Industry, Building Codes Bureau, P.O. Box 200517, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or on their web site at www.ICCSafe.org.

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-103, 50-60-109, 50-60-201, 50-60-203, 50-60-303, MCA

REASON: The department is adding (1)(b) to change all references in the International Mechanical Code (IMC) from the International Plumbing Code to the Uniform Plumbing Code which the department has adopted.

It is reasonably necessary to add (1)(i) to allow an exception for an audio alarm, instead of an automatic disconnect of the appliance or equipment, if the condensate pump serving the appliance or equipment fails. Heating equipment or appliances that would be automatically disconnected due to condensate pump failure may cause extreme damage to a structure during winter conditions.

The department is adding (1)(j) to allow the authority with jurisdiction the discretion to determine whether a pollution-control unit will be necessary. Pollution-control systems can be costly and may not be necessary in certain circumstances depending on the occupancy use or the proximity of other structures.

The department is adding (1)(k) to exempt single-family dwellings from the IMC Subsection 1101.10 requirement that outdoor refrigerant circuit access ports have locking, tamper-resistant caps or otherwise be secured to prevent unauthorized access. Illegal access to chemical refrigerant is most likely to occur at commercial buildings, not single-family dwellings, and therefore the health and safety benefit for occupants of commercial buildings outweighs the cost of the locking, tamper-resistant caps.

24.301.173 INCORPORATION BY REFERENCE OF INTERNATIONAL FUEL GAS CODE (1) The department adopts and incorporates by reference the International Fuel Gas Code, 2012 2018 edition, published by the International Code Council, IFGC, unless another edition is specifically stated, together with the following amendments:

(a) Subsection 102.8, Referenced Codes and Standards, is modified by adding the following: "Any reference to a separate specialty building regulation, by title, either in this subsection or elsewhere in this code, shall be considered deleted and replaced with the title of the model code adopted by the department and in effect at the time. For example, all references to the International Plumbing Code shall be deleted and replaced with the Uniform Plumbing Code."

(b) through (d) remain the same.

(e) Subsection 307.6, Condensate pumps, is modified by adding the following exception at the end: "Exception: A water sensor with audio alarm may be substituted for an appliance/equipment disconnect to allow for continued operation of the appliance/equipment."

(f) Subsection 403.4.2, Steel, is amended to state as follows: "403.4.2 Steel. Steel, stainless steel, and wrought-iron pipe shall be not lighter than Schedule 40

and shall comply with the dimensional standards of ASME B36.10M and one of the following standards:"

(2) The Building Codes and Commercial Measurements Bureau shall not enforce the IFGC on those buildings exempted from state building codes by 50-60-102, MCA. Cities, counties, and towns that have made the state building regulations applicable to buildings exempt from state enforcement, except for mines and buildings on mine property regulated under Title 82, chapter 4, MCA, may enforce within their jurisdictional areas the International Fuel Gas Code as adopted by those units of government.

(3) through (5) remain the same.

(6) The IFGC adopted by reference in (1) is a nationally recognized model code setting forth minimum standards and requirements for certain mechanical installations. A copy of the IFGC may be obtained from the ~~Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or on their web site at www.ICCSafe.org.~~

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-103, 50-60-109, 50-60-201, 50-60-203, 50-60-303, MCA

REASON: The department is amending (1)(a) to clarify the meaning of the rule by adding a specific example stating that references to the International Plumbing Code in the International Fuel Gas Code (IFGC) should be replaced with the Uniform Plumbing Code as adopted by the department. The department notes that this is an area of continued confusion and believes this amendment will help address the ongoing inquiries regarding these plumbing codes.

The department is adding (1)(e) to allow an exception for an audio alarm, instead of an automatic disconnect of the appliance or equipment, if the condensate pump serving the appliance or equipment fails. Heating equipment or appliances that would be automatically disconnected due to condensate pump failure may potentially cause extreme damage to a structure during winter conditions.

The department is adding (1)(f) to require a higher pipe standard to prevent fuel gas pipe installation failures. Light-weight pipe is more vulnerable to stress, corrosion, and cracking during winter conditions resulting in pipe installation failures which expose building occupants and others to serious health and safety risks such as a natural gas leak.

24.301.175 INCORPORATION BY REFERENCE OF INTERNATIONAL SWIMMING POOL AND SPA CODE (ISPSC) (1) The department adopts and incorporates by reference the International Swimming Pool and Spa Code, ~~2015~~ 2018 edition, published by the International Code Council, unless another edition is specifically stated, together with the following amendments:

(a) remains the same.

(2) As specified in ARM 24.301.146(20) ~~(26)~~, the department has deleted Section 3109 Swimming Pool Enclosures and Safety Devices from the International

Building Code and replaced that section with the International Swimming Pool and Spa Code (ISPSC) as adopted by reference in (1). Cities, counties, and towns that have adopted the International Building Code in connection with their certification to enforce building codes will utilize the applicable sections of the ISPSC to regulate swimming pool and spa construction.

(3) through (5) remain the same.

(6) The ISPSC adopted by reference in (1) is a nationally recognized model code setting forth minimum standards and requirements for swimming pool and spa installations. A copy of the ISPSC may be obtained from the ~~Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or on their web site at www.ICCSafe.org.~~

AUTH: 50-60-203, MCA

IMP: 50-53-103, 50-60-104, 50-60-202, 50-60-203, 76-2-412, MCA

24.301.181 INCORPORATION BY REFERENCE OF INTERNATIONAL WILDLAND-URBAN INTERFACE CODE (IWUIC) (1) The department adopts and incorporates by reference the International Wildland-Urban Interface Code, ~~2012~~ 2018 edition, published by the International Code Council, unless another edition is specifically stated, together with Appendix "B" (Vegetation Management Plan) and Appendix "C" (Fire Hazard Severity Form).

(2) through (10) remain the same.

(11) Subsection ~~109.4.4~~ 110.4.4, Citations, is deleted in its entirety.

(12) Subsection ~~109.4.5~~ 110.4.5, Unsafe Conditions, is deleted in its entirety.

(13) Subsection ~~109.4.5.1~~ 110.4.5.1, Record, is deleted in its entirety.

(14) Subsection ~~109.4.5.2~~ 110.4.5.2, Notice, is deleted in its entirety.

(15) Subsection ~~109.4.5.2.1~~ 110.4.5.2.1, Method of Service, is deleted in its entirety.

(16) Subsection ~~109.4.5.3~~ 110.4.5.3, Placarding, is deleted in its entirety.

(17) Subsection ~~109.4.5.3.1~~ 110.4.5.3.1, Placard Removal, is deleted in its entirety.

(18) Subsection ~~109.4.5.4~~ 110.4.5.4, Abatement, is deleted in its entirety.

(19) Subsection ~~109.4.5.5~~ 110.4.5.5, Summary Abatement, is deleted in its entirety.

(20) Subsection ~~109.4.5.6~~ 110.4.5.6, Evacuation, is deleted in its entirety.

(21) through (23) remain the same.

(24) The IWUIC adopted by reference in (1) is a nationally recognized model code setting forth minimum standards and requirements for the safeguarding of life and property. A copy of the IWUIC may be obtained from the ~~Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or on their web site at www.ICCSafe.org.~~

AUTH: 50-60-202, 50-60-203, MCA

IMP: 50-60-201, 50-60-202, 50-60-203, MCA

24.301.201 EXTENT OF LOCAL PROGRAMS (1) remains the same.

(2) When a city, county, or town is approved to enforce building, mechanical, electrical, or plumbing codes for limited types of buildings, the Department of Labor and Industry, Building Codes and Commercial Measurements Bureau retains authority to enforce building, mechanical, electrical, and plumbing codes for all other buildings not covered by the city, county, or town and which are not exempt from department regulation.

AUTH: 50-60-203, 50-60-302, 50-60-504, 50-60-603, MCA

IMP: 50-60-202, 50-60-203, 50-60-301, 50-60-302, 50-60-504, 50-60-603, MCA

24.301.203 FUNDING OF CODE ENFORCEMENT PROGRAM (1) remains the same.

(2) Permit fees must only be used for those costs related to building code enforcement activities, except for the building codes education fund as provided in 50-60-116, MCA, with building codes being only those codes adopted by the department in subchapters 1, 3, 4, and 15 of ARM Title 24, chapter 301. It is not intended that permit fees be used to support fire departments, planning, zoning, or other activities, except to the extent that employees in those programs provide direct plan review, inspection, or other building code enforcement services for the city, county, or town's building code enforcement programs. Permit fees shall not be used to support the inspection of existing buildings for maintenance or for abatement of dangerous buildings.

(3) through (5) remain the same.

AUTH: 50-60-203, 50-60-302, MCA

IMP: 50-60-106, 50-60-302, MCA

REASON: The department discovered instances of certified city, county, and town building programs using building permit fees to support the inspection of existing buildings for maintenance or for dangerous building abatement. The building permit fees are intended to be used to support the enforcement of the building codes adopted by the department. The department determined it is reasonably necessary to amend this rule to clarify this intent by prohibiting the local building programs from using building permit fees for any other purpose.

24.301.208 INCORPORATION BY REFERENCE OF INDEPENDENT ACCOUNTANT'S REPORTING FORMAT FOR APPLYING AGREED-UPON PROCEDURES DURING AUDITS OF CERTIFIED CITY, COUNTY, OR TOWN BUILDING CODE ENFORCEMENT PROGRAMS (1) through (3) remain the same.

(4) A copy of the document identified in (1) may be obtained from the Department of Labor and Industry, Bureau of Building and Measurement Standards Building and Commercial Measurements Bureau, P.O. Box 200517, 301 South Park, Helena, MT 59620-0517. Copies may also be obtained by facsimile request sent to

Certified City Program at (406) 841-2050, by e-mail request sent to bsdbcb@mt.gov, buildingcodes@mt.gov, or by downloading the document from the department's web site at www.buildingcodes.mt.gov.

(5) and (6) remain the same.

AUTH: 50-60-203, 50-60-302, MCA

IMP: 50-60-302, MCA

24.301.301 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) The department adopts and incorporates by reference the Uniform Plumbing Code, 2012 2018 edition, unless another edition is specifically stated, together with the following appendix chapters and amendments:

(a) through (c) remain the same.

(d) Subsection ~~403.1.2~~ 103.3.1, Licensing, is amended with the addition of the following language: The requirements for who must be licensed to perform plumbing work is regulated by Title 37, chapter 69, MCA.

(e) Subsections ~~102.3, 102.4, 102.5, 103.1, 103.2, 103.3, 103.4, 103.5, and 103.6~~ 104.1, 104.2, 104.3, 104.3.2, 104.4, 104.5, 105.0, 105.4, 106.1, 106.3, and 107.0 will be left as is for use by local governments (i.e., municipalities and counties), but will not be used by the department and the state of Montana. For the purposes of enforcement by the department, these subsections are replaced with provisions of Title 50, chapter 60, part 5, MCA.

(i) through (iv) remain the same.

(f) Delete Table ~~403.4~~ 104.5 - PLUMBING PERMIT FEES and replace with the following schedule:

(i) through (xiv) remain the same.

(g) Section 218, Definition of Plumbing System, is amended to read: "Includes all potable water and alternate water sources including supply and distribution pipes, all plumbing fixtures and traps, all drainage and vent pipes, building drains and building sewers, including their respective joints and connections, devices, receptacles, and appurtenances within the property line of any premises, and includes water heaters and vents for the premises."

(h) through (m) remain the same.

~~(n) Subsection 604.0, Materials, is amended to read as follows:~~

~~(i) "Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron, galvanized steel, or other approved materials."~~

~~(ii) Cast iron fittings used for water need not be galvanized if over 2 inches (51 mm) in size.~~

~~(iii) Asbestos cement, PB, CPVC, PE, PEX, PEX-AL-PEX or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building. These approved outside cold water piping materials except for asbestos cement may extend to a point within the foundation perimeter of the building provided that the piping is buried a minimum of 12 inches, the piping is contained within a protective sleeve where it passes through concrete construction and the piping does not extend for more than 24 inches out of the ground at such point where it connects to approved interior cold water piping material.~~

~~(iv) All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the administrative authority.~~

~~(v) Table 604.1 is amended to add the following: "PB is allowed for hot and cold water distribution."~~

~~(e)~~ (n) Subsection 604.2 ~~604.3~~, the exception is amended to read as follows: Exception: Type M copper tubing may be used for water piping when piping is above ground in, or on, a building.

~~(p)~~ (o) Subsection ~~605.13.2~~ 605.12.2, Solvent Cement Joints, delete the third sentence and replace with the following: "Where surfaces to be joined are cleaned and free of dirt, moisture, oil, and other foreign material, apply approved primer in accordance with ASTM F 656."

(p) Subsection 609.11, Pipe Insulation, is deleted in its entirety.

~~(q) Subsection 701.1 is amended to read as follows: "Drainage piping shall be cast iron, galvanized steel, galvanized wrought iron, lead, copper, brass, Schedule 40 ABS DWV, Schedule 40 ABS DWV cellular core, Schedule 40 PVC DWV, Schedule 40 PVC DWV cellular core, extra strength vitrified clay pipe, or other approved materials having a smooth and uniform bore, except that:~~

~~"(1) Galvanized wrought iron or galvanized steel pipe shall not be used underground, and it shall be kept at least six inches (152 mm) above ground.~~

~~"(2) ABS and PVC DWV piping installations must be installed in accordance with Chapter 15, "Firestop Protection." Except for individual single family dwelling units, materials exposed within ducts or plenums shall have a flame spread index of not more than 25 and a smoke developed index of not more than 50, when tested in accordance with the Test for Surface Burning Characteristics of the Building Materials (See the building code standards based on ASTM E-84 and ANSI/UL 723).~~

~~"(3) Vitrified clay pipe and fittings shall not be used above ground or where pressurized by a pump or ejector. They shall be kept at least 12 inches (305 mm) below ground.~~

~~"(4) Copper tube for drainage and vent piping shall have a weight not less than that of copper drainage tube type DWV."~~

~~(r) remains the same but is renumbered (q).~~

(r) Subsection 612.0, Residential Fire Sprinkler Systems, is deleted in its entirety.

~~(s) Subsection 701.1 (4), is amended with the addition of the following language: Copper tube for underground drainage and vent piping shall have a weight of not less than that of copper tube type L.~~

~~(t) remains the same but is renumbered (s).~~

~~(u)~~ (t) Subsection ~~705.7.2~~ 705.6.2, Solvent Cement Joints, delete the third sentence and replace with the following: "Where surfaces to be joined are cleaned and free of dirt, moisture, oil, and other foreign material, apply approved primer in accordance with ASTM F 656."

~~(v) through (y) remain the same but are renumbered (u) through (x).~~

~~(z)~~ (y) Subsection 807.4 ~~807.3~~, Domestic Dishwashing Machine, add exception as follows: "Exception #1: An approved type of indirect waste receptor may be used to receive discharge from domestic dishwashing machines The waste connection of a residential dishwasher shall connect directly to a wye branch fitting

on the tailpiece of the kitchen sink, directly to the dishwasher connection of a food waste disposer, or through an air break to a standpipe. The waste line of a residential dishwasher shall rise and be securely fastened to the underside of the sink rim or countertop."

~~(aa) Subsection 903.2.1 is amended to read as follows: "Copper tube for underground drainage and vent piping shall have a weight of not less than that of copper tube Type L."~~

~~(ab) (z)~~ Subsection 906.1, the first sentence is amended to read as follows: Each vent pipe or stack shall extend through its flashing and shall terminate vertically not less than 12 inches above the roof nor less than one foot from any vertical surface.

~~(ac) through (ag) remain the same but are renumbered (aa) through (ae).~~

~~(af) Subsection 908.2 is amended with addition of the following: "Bathroom group locations include private bathrooms, private patient hospital rooms, commercial toilet rooms with only one toilet, one lavatory and may include one floor drain."~~

~~(ah) remains the same but is renumbered (ag).~~

~~(ai) (ah) Chapter 13, Health Care Facilities and Medical Gas and Vacuum Systems, is deleted except for Subsections 1301.0, 1302.0, and 1303.0, Health Care Facilities 1304.0, 1305.0, 1306.0, 1307.0, and 1308.0. In lieu of Chapter 13, except for the subsections not deleted, the Department of Labor and Industry adopts and incorporates by reference the National Fire Protection Association's Standard NFPA 99, 2012 2018 edition, Chapters 1 through 5 and Chapter 15 for the exclusive use as a standard for medical gas and vacuum systems, unless a different edition date is specifically stated, as the standard for the installation of medical gas and vacuum systems. The requirements of this rule shall not be construed as to replace or supersede any additional requirements for testing and certification of medical gas and vacuum systems, including independent third-party certification of systems, as may be applicable. NFPA 99 is a nationally recognized standard setting forth minimum standards and requirements for medical gas and vacuum systems. A copy of NFPA 99 may be obtained from the National Fire Protection Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 at www.nfpa.org.~~

~~(2) The purpose of this code is to provide minimum requirements and standards for plumbing installations for the protection of the public health, safety, and welfare. The Uniform Plumbing Code is a nationally recognized model code setting forth minimum standards and requirements for plumbing installations. A copy of the Uniform Plumbing Code may be obtained from the Department of Labor and Industry, Bureau of Building and Measurement Standards, P.O. Box 200517, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Association of Plumbing and Mechanical Officials, 20001 South Walnut Drive, Walnut, CA 91789 at www.iapmo.org.~~

AUTH: 50-60-203, 50-60-504, 50-60-508, MCA

IMP: 50-60-201, 50-60-203, 50-60-504, 50-60-508, MCA

REASON: It is reasonably necessary to amend (1)(g) to add alternative water sources to the definition of plumbing system. Alternative water sources are

nonpotable water and include treated nonpotable water and rainwater catchment systems. Through this amendment, the plumbing system requirements will apply to Chapter 15, Alternate Water Sources for Nonpotable Applications, and Chapter 16, Nonpotable Rainwater Catchment Systems, in the 2018 UPC. There is an increasing demand for fresh water conservation throughout the United States as fresh water supplies are decreasing and the cost of producing potable water is increasing. Alternative water sources are a viable means to lessen demand for potable water and can help conserve water resources.

The department is striking (1)(n) in its entirety because the 2018 UPC, Subsection 604.0, Materials, is now substantially similar to the proposed deletion. Further, the 2018 UPC no longer references asbestos cement because it is no longer manufactured. Accordingly, (1)(n) is no longer necessary.

The department is adding (1)(p) to strike 2018 UPC, Subsection 609.11 in its entirety. Subsection 609.11 is new to the 2018 UPC and pipe insulation is already addressed in ARM 24.301.161(1)(k) as modified from the 2018 IECC.

It is reasonably necessary to delete (1)(q) entirely because the 2018 UPC, Subsection 701.2, Drainage Piping, and Table 701.2, Materials for Drain, Waste, Vent Pipe and Fittings, are now substantially similar to the proposed deletion.

The department is adding (1)(r), which deletes Subsection 612.0, Residential Fire Sprinkler Systems of the 2018 UPC, because fire sprinkler systems are not required in residential structures by the IRC as adopted at ARM 24.301.154.

It is reasonably necessary to delete (1)(s) because the 2018 UPC at Table 701.2, Materials for Drain, Waste, Vent Pipe and Fittings, lists the reference standards for approved materials for a DWV plumbing system. Also, copper DWV plumbing systems have become a specialty use subject to engineering requirements including analyzing soil samples to determine the weight of the copper tube required.

The department is amending (1)(y) to no longer allow an indirect waste receptor to be used to receive discharge from a dishwasher because it was only marginally successful. The amendment will require the waste line of a residential dishwasher to rise and be securely fastened to the underside of the sink rim or countertop because jurisdictions have been successfully allowing the use of the high-loop dishwasher discharge line.

The department is striking (1)(aa) in its entirety because the 2018 UPC is now substantially similar to the proposed deletion.

It is reasonably necessary to amend (1)(z) to address confusion by specifying that it is the first sentence of Subsection 906.1, 2018 UPC, that is modified.

The department is adding (1)(af) to amend Subsection 908.2, Horizontal Wet Venting for a Bathroom Group, 2018 UPC, and further clarify bathroom group locations to firmly establish guidelines for inspections and define the method used for the plumbing installation in a commercial application.

The department is amending (1)(ah) to delete applicability of Subsections 1304.0 through 1308.0 because these subsections conflict with NFPA 99. The department is adding Subsections 1301.0, 1302.0, and 1303.0 for applicability and reference for basic requirements for occupant safety and locations of equipment or appliances related to the medical facilities.

24.301.351 MINIMUM REQUIRED PLUMBING FIXTURES (1) The following table will be used to determine the minimum number of plumbing fixtures to be installed in new buildings:

Table MINIMUM NUMBER OF PLUMBING FACILITIES remains the same.

Table footnotes a. through n. remain the same.

o. Riding arenas as defined in ARM 24.301.146(8)(b) (11) are required to provide separate male and female accessible restrooms which contain a minimum of one water closet and one lavatory.

Table footnotes p. through r. remain the same.

AUTH: 50-60-203, 50-60-504, MCA

IMP: 50-60-203, 50-60-504, MCA

24.301.401 INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL CODE (1) The department, ~~by and through the Building Codes Bureau,~~ adopts and incorporates by reference the National Fire Protection Association Standard NFPA 70, National Electrical Code, 2014 2017 edition referred to as the National Electrical Code, unless another edition date is specifically stated. The National Electrical Code is a nationally recognized model code setting forth minimum standards and requirements for electrical installations. ~~A copy of the National Electrical Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, MT 59620-0517 or the National Fire Protection Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.~~

(2) Subsection 210.12, Arc-Fault Circuit-Interrupter Protection, is amended to delete all references to "kitchen" or "kitchens."

(3) A copy of the National Electrical Code may be obtained from the National Fire Protection Association at www.nfpa.org/NEC.

AUTH: 50-60-203, 50-60-603, MCA

IMP: 50-60-201, 50-60-203, 50-60-601, 50-60-603, MCA

REASON: In discussion of the adoption of the updated 2017 edition of the National Fire Protection Association Standard NFPA 70, National Electrical Code, referred to as the National Electrical Code (NEC), the council advised the department that the building industry has experienced numerous "nuisance trips" of arc-fault circuit-interrupters (AFCIs) in dwelling unit kitchens and recommended excluding kitchens from the areas listed in Subsection 210.12 in which AFCIs are required. AFCIs are intended to detect arc faults and de-energize the circuit when an arc fault is detected. The "nuisance trips" de-energize appliances in use and most frequently de-energize the refrigerator and freezer causing food spoilage and sometimes damage to the appliance. AFCIs were not required in kitchens prior the 2014 NEC and the current kitchen appliance technology does not appear to be compatible with AFCIs. Further, not requiring AFCIs in kitchens does not appear to pose a significant risk to health and safety.

Additionally, when department staff advised the State Electrical Board during its July 18, 2019, meeting that the council requested excluding kitchens from the

areas listed in Subsection 210.12 in which AFCIs are required, the Electrical Board did not state any objections to this proposed change. Therefore, it is reasonably necessary for the department to add (2) to this rule.

24.301.511 DEFINITIONS (1) "Bureau" means the Building Codes and Commercial Measurements Bureau of the Department of Labor and Industry.

(2) through (11) remain the same.

(12) "Recreational vehicles" has the same meaning as in 50-60-101, MCA.

(12) through (15) remain the same but are renumbered (13) through (16).

AUTH: 50-60-203, 50-60-401, MCA

IMP: 50-60-203, 50-60-401, MCA

REASON: The department is adding (12) to provide the statutory definition for recreational vehicles to assist readers in understanding and applying ARM Title 24, chapter 301, subchapter 5.

24.301.514 ENFORCEMENT GENERALLY (1) The Building Codes and Commercial Measurements Bureau shall administer and enforce all the provisions of Title 50, chapter 60, MCA, and the rules adopted pursuant thereto.

AUTH: 50-60-203, 50-60-401, MCA

IMP: 50-60-203, 50-60-401, MCA

24.301.904 SITE ACCESSIBILITY (1) and (2) remain the same.

(3) Sections 1104, and 1106 and 3409 of the IBC are each amended by addition of the following: "A person or entity may not be required to meet fully the accessible exterior route requirements for new buildings or alterations to existing buildings, where the person or entity can demonstrate that due to unique characteristics of the terrain, it is structurally impractical to fully comply, as determined on a case-by-case basis, at the discretion of the building official. Full compliance may be considered structurally impractical only in those rare circumstances when the unique characteristics of the terrain prevent the incorporation of accessibility features. The person or entity shall comply with the accessible facilities requirements to the extent that compliance is not structurally impractical."

(4) through (6) remain the same.

AUTH: 50-60-203, MCA

IMP: 50-60-201, 50-60-213, MCA

REASON: It is reasonably necessary to amend this rule because Section 3409, Existing Structures, has been deleted from the 2018 IBC. The provisions of former Section 3409 are now contained in the 2018 IEBC and included in the adoption of the 2018 IBC at ARM 24.301.171.

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 Building and Commercial Measurements Bureau, 301 South Park Avenue, P.O. Box 200517, Helena, MT 59620-0517, by facsimile to (406) 841-2050, or e-mail to buildingcodes@mt.gov, and must be received no later than 5:00 p.m., September 20, 2019.

6. An electronic copy of this notice of public hearing is available at www.buildingcodes.mt.gov. 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 department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the Building and Commercial Measurements Bureau. 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 building codes 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 Building and Commercial Measurements Bureau, 301 South Park Avenue, P.O. Box 200517, Helena, MT 59620-0517; faxed to the office at (406) 841-2050; e-mailed to buildingcodes@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 department has determined that the amendment of the above-stated rules will not significantly and directly impact small businesses.

Documentation of the above-stated determination is available upon request to the Building and Commercial Measurements Bureau, 301 South Park Avenue, P.O. Box 200517, Helena, MT 59620-0517; telephone (406) 841-2053; facsimile (406) 841-2050; or to buildingcodes@mt.gov.

10. Jennifer Massman, program attorney, has been designated to preside over and conduct this hearing.

/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 August 13, 2019.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 36.12.101, 36.12.1501, and	)	PROPOSED AMENDMENT AND
36.16.107 and the repeal of ARM	)	REPEAL
36.12.2101 and 36.12.5001)	
pertaining to Water Rights and Water)	
Reservations)	

To: All Concerned Persons

1. On September 20, 2019, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Ted Doney Conference Room (second floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The department 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 5:00 p.m. on September 13, 2019, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, Montana 59620-1601; telephone (406) 444-0581; fax (406) 444-0533; email mheffner@mt.gov.

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

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (5) remain the same.

~~(6) "Appropriation right" means any right to the use of water which would be protected under the law as it existed prior to July 1, 1973, and any right to the use of water obtained in compliance with the provisions and requirements of the act.~~

(7) through (88) remain the same but are renumbered (6) through (87).

AUTH: 2-4-201, 85-2-113, 85-2-308, 85-2-370, MCA

IMP: 85-2-113, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-360, 85-2-361, 85-2-362, ~~85-2-363~~, 85-2-364, 85-2-368, 85-2-370, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-418, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 59, Laws of 2019 (House Bill 57), amending 85-2-102, MCA, to include a

definition of "appropriation right." Therefore, the definition is no longer necessary in rule. The bill was signed by Governor Bullock on March 18, 2019, and will become effective on October 1, 2019.

36.12.1501 PERMIT AND CHANGE APPLICATION DEFICIENCY LETTER AND TERMINATION (1) remains the same.

~~(2) The priority date on a permit application or the date received on a change application will not be changed if:~~

~~(a) all of the requested information in the deficiency letter is postmarked or submitted to the department within 30 days of the date of the deficiency letter; or~~

~~(b) within 45 days of the date of the deficiency letter, the department has granted an extension. The department may only grant an extension if the applicant submits a written request for an extension within 30 days of the date of the deficiency letter.~~

~~(3) The permit application priority date or change application date received will be changed to the date when the department receives all of the requested information if:~~

~~(a) all of the requested information in the deficiency letter is postmarked or submitted between 31 and 90 days of the date of the deficiency letter; or~~

~~(b) in cases where an extension is granted by the department, 45 to 90 days of the date of the deficiency letter.~~

~~(4)~~(2) If all of the requested information in the deficiency letter is not postmarked or submitted within ~~90~~ 120 days of the date of the deficiency letter, the permit or change application will be terminated and the application fee will not be refunded.

AUTH: 85-2-113, MCA

IMP: 85-2-302, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 209, Laws of 2019 (Senate Bill 81), amending 85-2-302, MCA, to extend the deficiency response deadline to 120 days. The bill was signed by Governor Bullock on April 30, 2019, and will become effective on October 1, 2019.

36.16.107 CORRECT AND COMPLETE (1) remains the same.

(2) The department shall determine if an application is correct and complete within 180 days after an application has been submitted along with the required application fee. A water reservation application will be deemed correct and complete if a permit applicant's information, required to be submitted by ARM 36.16.104, 36.16.105, 36.16.105A, 36.16.105B, 36.16.105C, and 36.16.106, conforms to the standard of substantial credible information and all the necessary parts of the application form requiring the information, including any required addendums, have been filled in with the required information. A determination that an application is correct and complete is in no way a judgment on the part of the department on the merits of the reservation proposal. The department must notify the applicant in writing of any deficiencies.

(a) and (b) remain the same.

- ~~(c) The priority date on a water reservation application will not be changed if:~~
~~(i) all of the requested information in the deficiency letter is postmarked and submitted to the department within 30 days of the date of the deficiency; or~~
~~(ii) within 45 days of the date of the deficiency letter if the department has granted an extension. The department may only grant an extension if the applicant submits a written request for an extension within 30 days of the date of the deficiency letter.~~
~~(d) The water reservation application priority date will be changed to the date when the department receives all of the requested information if:~~
~~(i) all of the requested information in the deficiency letter is postmarked and submitted between 31 and 90 days of the date of the deficiency letter; or~~
~~(ii) in cases where an extension is granted by the department, 45 to 90 days of the date of the deficiency letter.~~
~~(e)(c)~~ If all of the requested information in the deficiency letter is not postmarked or submitted within ~~90~~ 120 days of the date of the deficiency letter, the water reservation application will be terminated and the application fee will not be refunded.
(3) through (5) remain the same.

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

REASONABLE NECESSITY: Pursuant to 85-2-316, MCA, "[t]he department shall proceed in accordance with 85-2-302 with regard to any defects in the application [for a state water reservation]." The 2019 Montana Legislature enacted Chapter 209, Laws of 2019 (Senate Bill 81), amending 85-2-302, MCA, to extend the deficiency response deadline to 120 days. The bill was signed by Governor Bullock on April 30, 2019, and will become effective on October 1, 2019.

4. The department proposes to repeal the following rules:

36.12.2101 TEMPORARY LEASE OF APPROPRIATION RIGHT

AUTH: 85-2-113, 85-2-427, MCA

IMP: 85-2-427, MCA

REASONABLE NECESSITY: The rule was adopted to implement 85-2-427, MCA (Section 1, Chapter 236, Laws of 2013) (House Bill 37), which terminated on July 1, 2019, pursuant to Section 4, Chapter 236, Laws of 2013 (House Bill 37).

36.12.5001 APPEALS DEADLINE

AUTH: 85-2-276(9), MCA

IMP: 15-1-216, 85-2-237, 85-2-270, 85-2-271, 85-2-272, 85-2-273, 85-2-276, 85-2-279, 85-2-280, 85-2-281, 85-2-282, 85-2-283, MCA

REASONABLE NECESSITY: The rule was adopted to implement 85-2-276, MCA (Section 5, Chapter 288, Laws of 2005) (House Bill 22), which was repealed by the 2007 Montana Legislature (Section 9, Chapter 319, Laws of 2007) (House Bill 473).

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 in writing to: Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, Montana 59620-1601; fax (406) 444-0533; email mheffner@mt.gov, and must be received no later than 5:00 p.m., September 20, 2019.

6. David Vogler, Department of Natural Resources and Conservation, 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 Aliselina Strong, P.O. Box 201601, 1539 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail astrong@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. The primary bill sponsors were contacted on July 31, 2019, via email.

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/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Barbara Chillcott
BARBARA CHILLCOTT
Rule Reviewer

Certified to the Secretary of State August 13, 2019.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES 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
37.114.101, 37.114.105, 37.114.203,	)	AMENDMENT
37.114.204, 37.114.313, 37.114.314,)	
37.114.526, 37.114.546, 37.114.571,)	
37.114.590, 37.114.1001, and)	
37.114.1015 pertaining to)	
communicable disease control)	

TO: All Concerned Persons

1. On September 12, 2019, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 4, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I MULTIDRUG-RESISTANT ORGANISMS (MDROs) (1) For cases or outbreaks of Multidrug-Resistant Organisms (MDROs), control measures outlined in the "Interim Guidance for a Public Health Response to Contain Novel or Targeted Multidrug-resistant Organisms (MDROs)," updated January 2019, must be applied and infection control precautions appropriate to the event must be implemented.

(2) The department will provide consultation, assist with investigations, and coordinate responses in healthcare facility and community settings at the request of the local health officer.

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

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

37.114.101 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this chapter:

(1) through (6) remain the same.

(7) "Directly observed therapy (DOT)" means the method whereby a trained health-care worker or another trained designated person watches a patient swallow each dose of antituberculosis medication and documents it. DOT can include electronic directly observed therapy (eDOT) utilizing a video conferencing application only with express permission from the state TB program.

(8) remains the same.

(9) "Form" means a paper form or electronically submitted information consisting of data elements necessary to implement effective surveillance, investigation, or mitigation of reportable diseases and outbreaks.

(9) through (23) remain the same but are renumbered (10) through (24).

(25) "Multidrug-Resistant Organisms (MDRO)" means microorganisms, predominantly bacteria, that are resistant to one or more classes of antimicrobial agents.

~~(24)~~ (26) "Outbreak" means an incidence of a disease or infection significantly exceeding the incidence normally observed in a population of people over a period of time specific to the disease or infection in question the occurrence of more cases of a disease than would normally be expected in a specific place or group of people over a given period of time.

(25) through (33) remain the same but are renumbered (27) through (35).

(36) "Toxic Metals" means individual metals and metal compounds that may negatively affect an individual's health and shall include arsenic, cadmium, lead, and mercury for the purposes of these rules.

AUTH: 50-1-202, 50-2-116, 50-17-103, MCA

IMP: 50-1-202, 50-17-103, 50-18-101, MCA

37.114.105 INCORPORATION BY REFERENCE (1) The department adopts and incorporates by reference the following publications:

(a) through (f) remain the same.

(g) The "Interim Guidance for a Public Health Response to Contain Novel or Targeted Multidrug-resistant Organisms (MDROs)," updated January 2019, published by the U.S. Centers for Disease Control and Prevention, which serves as general guidance to state and local health departments and healthcare facilities in relation to the initial response for the containment of novel or targeted MDROs or resistance mechanisms.

(2) To obtain, or for information on how to obtain, any document or publication incorporated by reference, contact the Department of Public Health and Human Services, Public Health and Safety Division, Communicable Disease Control and Prevention Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, phone: (406) 444-0919, or by visiting our website at: <https://dphhs.mt.gov/publichealth/cdepi/reporting>.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.114.203 REPORTABLE DISEASES AND CONDITIONS (1) The following communicable diseases and conditions are reportable:

(a) through (d) remain the same.

(e) Arsenic poisoning (≥ 70 micrograms per liter ($\mu\text{g/L}$) total arsenic in urine; or ≥ 35 $\mu\text{g/L}$ methylated plus inorganic arsenic in urine);

(e) through (g) remain the same but are renumbered (f) through (h).

(i) Cadmium poisoning (\geq five $\mu\text{g/L}$ total blood cadmium levels; or \geq three $\mu\text{g/L}$ total cadmium in urine);

(j) Candida auris (C. auris);

(h) through (r) remain the same but are renumbered (k) through (u).

~~(s)~~ (v) Escherichia coli, shiga Shiga toxin-producing (STEC);

(t) through (ae) remain the same but are renumbered (w) through (ah).

~~(af)~~ (ai) Lead poisoning (blood levels \geq five micrograms per deciliter ($\mu\text{g/dL}$) (\geq five micrograms per deciliter $\mu\text{g/dL}$ total blood lead levels);

(ag) through (an) remain the same but are renumbered (aj) through (aq).

(ar) Mercury poisoning (≥ 200 $\mu\text{g/L}$ total mercury in urine; or ≥ 20 μg elemental mercury/g creatinine in urine; or ≥ 10 $\mu\text{g/L}$ elemental, organic, and inorganic blood mercury levels);

(ao) through (av) remain the same but are renumbered (as) through (az).

~~(aw)~~ (ba) Salmonellosis (including Salmonella Typhi and Paratyphi);

(ax) through (bg) remain the same but are renumbered (bb) through (bk).

~~(bh)~~ (bl) Transmissible spongiform encephalopathies (including Creutzfeldt Jakob Disease);

(bi) remains the same but is renumbered (bm).

~~(bj)~~ (bn) Tuberculosis (TB) including latent tuberculosis infection;

(bk) remains the same but is renumbered (bo).

~~(bl) Typhoid fever;~~

(bm) through (bp) remain the same but are renumbered (bp) through (bs).

(2) remains the same.

AUTH: 50-1-202, 50-17-103, 50-18-105, 50-18-106, MCA

IMP: 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.204 REPORTS AND REPORT DEADLINES (1) remains the same.

(2) A local health officer must transmit by telephone or secure electronic means to the department the information required by ARM 37.114.205(1) and (2) for each suspected or confirmed case of one of the following diseases, within the time limit noted for each:

(a) remains the same.

(b) Information about a case of one of the following diseases must be submitted within seven calendar days after it is received by the local health officer:

(i) through (iii) remain the same.

(iv) Arsenic poisoning ($\geq 70 \mu\text{g/L}$ total arsenic in urine; or $\geq 35 \mu\text{g/L}$ methylated plus inorganic arsenic in urine);

(iv) remains the same but is renumbered (v).

(vi) Cadmium poisoning ($\geq \text{five } \mu\text{g/L}$ total blood cadmium levels; or $\geq \text{three } \mu\text{g/L}$ total cadmium in urine);

(v) remains the same but is renumbered (vii).

(viii) Candida auris (C. auris);

(vi) through (xxii) remain the same but are renumbered (ix) through (xxv).

(xxvi) Lead poisoning (blood levels $\geq \text{five micrograms per deciliter, } \mu\text{g/dL}$ total blood lead levels ($\mu\text{g/dL}$);

(xxiv) through (xxix) remain the same but are renumbered (xxvii) through (xxxii).

(xxxiii) Mercury poisoning ($\geq 200 \mu\text{g/L}$ total mercury in urine; or $\geq 20 \mu\text{g}$ elemental mercury/g in creatinine in urine; or $\geq 10 \mu\text{g/L}$ elemental, organic, and inorganic blood mercury levels);

(xxx) through (xxxiii) remain the same but are renumbered (xxxiv) through (xxxvii).

(xxxviii) Salmonellosis (including Salmonella Typhi and Paratyphi);

(xxxv) through (xlvi) remain the same but are renumbered (xxxix) through (xlvii).

(xlviii) Tuberculosis (TB) including latent tuberculosis infection;

~~(xlv) Typhoid Fever;~~

(xlv) through (xlix) remain the same but are renumbered (xlix) through (lii).

(3) remains the same.

(4) For any animal bite exposure that may result in a risk of rabies transmission to a human by a species susceptible to rabies infection, the local health officer must report by secure electronic means to the department documentation of a rabies post-exposure prophylaxis recommendation or administration on a form provided by the department within seven calendar days of the recommendation or administration.

(5) A laboratory that performs testing associated with HIV infection must report:

(a) and (b) remain the same.

(c) HIV nucleic acid tests, RNA or DNA, irrespective of result; and

(d) all test results for assays designed to assess HIV infection subtype and resistance to antiretroviral drugs, including nucleotide sequences, in a format designated by the department; and

(e) submit a specimen utilized for surveillance purposes only, to the department's public health laboratory upon request.

AUTH: 50-1-202, 50-17-103, 50-18-105, MCA

IMP: 50-1-202, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.313 CONFIRMATION OF DISEASE (1) Subject to the limitation in (2), if a local health officer receives information about a case of any of the following diseases, the officer must work with the department to ensure that a specimen from

the case is submitted to the department, when possible, which will be analyzed to confirm the existence or absence of the disease in question, or for further examination associated with use in surveillance or investigation of disease transmission:

- (a) through (d) remain the same.
- ~~(e) Campylobacteriosis;~~
- (e) Candida auris (C. auris);
- (f) Carbapenem-Resistant Enterobacteriaceae (CRE) Organisms;
- (g) and (h) remain the same.
- (i) Escherichia coli, shiga Shiga toxin-producing (STEC);
- ~~(j) Gonorrhea;~~
- (k) and (l) remain the same but are renumbered (j) and (k).
- ~~(m) Human immunodeficiency virus (HIV);~~
- (n) through (u) remain the same but are renumbered (l) through (s).
- ~~(v) (t) Salmonellosis (including Salmonella Typhi and Paratyphi);~~
- (w) through (y) remain the same but are renumbered (u) through (w).
- ~~(z) Syphilis;~~
- (aa) remains the same but is renumbered (x).
- ~~(ab) (y) Tuberculosis disease;~~
- (ac) remains the same but is renumbered (z).
- ~~(ad) Typhoid fever;~~
- (ae) through (ag) remain the same but are renumbered (aa) through (ac).
- (2) In the event of an outbreak, emergence of an arboviral disease, gastroenteritis, influenza, measles, or pertussis, a communicable disease or a disease of public health importance, specimens must be submitted at the request of the department until a representative sample has been reached as determined by the department.
- (3) A laboratory professional or any other person in possession of a specimen from a case of a disease listed in (1) ~~(a) through (ag)~~ must submit the specimen to the department upon request.
- (4) remains the same.

AUTH: 50-1-202, 50-1-204, MCA

IMP: 50-1-202, 50-1-204, MCA

37.114.314 INVESTIGATION OF A CASE (1) and (2) remain the same.

(3) Whenever the identified source of a reportable disease or a person infected or exposed to a reportable disease who should be quarantined, interviewed, or placed under surveillance is located outside of the jurisdiction of the local health officer, the local health officer must notify coordinate with the department ~~who will then~~ to notify the health officer of the relevant jurisdiction.

AUTH: 50-1-202, 50-2-118, 50-17-103, 50-18-105, MCA

IMP: 50-1-202, 50-2-118, 50-17-103, 50-17-105, 50-18-102, 50-18-107, 50-18-108, MCA

37.114.526 ESCHERICHIA COLI ENTERITIS (SHIGA-TOXIN PRODUCING)

(1) The local health officer or the department must ensure that a child attending day care or child care as defined in ARM 37.95.102 must be excluded from such care until diarrhea resolves and two stool ~~cultures~~ specimens collected at least 24 hours apart, obtained at least 48 hours after antimicrobial therapy has been discontinued, are negative.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.546 LEAD POISONING: ELEVATED BLOOD LEAD LEVELS TOXIC METALS (1) remains the same.

(2) The local health officer must ensure that the following actions are performed when a ~~blood lead level \geq five micrograms per deciliter is reported~~ biological sample derived from the human body is reported that exceeds reportable toxic metal levels indicated in ARM 37.114.203(1)(e), (i), (ai), and (ar). The health officer or health-care provider must provide:

(a) counseling about the health consequences of ~~lead poisoning~~ their toxic metals exposure;

(b) information about ways to reduce or eliminate lead their exposure(s) to toxic metals exposure; and

(c) referral of the case and household members potentially at risk of exposure to a health-care provider for additional follow-up and ~~blood lead~~ testing as appropriate.

(3) The department will provide consultation, assist with investigations, and coordinate responses in occupational and community settings at the request of the health officer.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.114.571 RABIES EXPOSURE (1) through (3) remain the same.

(4) Whenever the circumstances involve a dog, cat, or ferret, the local health officer must:

(a) arrange for the animal to be observed for signs of illness during a ten-day ~~quarantine~~ observation period at an animal shelter, veterinary facility, or other adequate facility, and ensure that any illness in the animal during the confinement or before release is evaluated by a veterinarian for signs suggestive of rabies; and

(b) remains the same.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.590 TYPHOID FEVER SALMONELLA TYPHI (1) remains the same.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.1001 TUBERCULOSIS DIAGNOSIS (1) through (3) remain the same.

(4) A case of latent tuberculosis infection exists if the case meets the laboratory and clinical criteria in (5) and (6).

(5) Laboratory criteria for latent tuberculosis infection:

(a) a positive tuberculin skin test (TST); or

(b) a positive interferon gamma release assay (IGRA).

(6) Clinical criteria for latent tuberculosis infection:

(a) no clinical evidence compatible with TB disease including no signs or symptoms consistent with TB disease; and

(b) chest imaging without abnormalities consistent with TB disease (chest radiograph or CT scan); or

(c) abnormal chest imaging that could be consistent with TB disease with microbiologic testing that is negative for abnormal chest imaging that could be consistent with TB disease with microbiologic testing that is negative for Mycobacterium Tuberculosis Complex and where TB disease has been clinically ruled out.

AUTH: 50-1-202, 50-17-103, 50-17-105, MCA

IMP: 50-1-202, 50-17-103, 50-17-105, MCA

37.114.1015 CASE FOLLOW-UP, REPORTING, AND CONTACT INVESTIGATION (1) through (4) remain the same.

(5) A case of latent tuberculosis must be referred to a health-care provider to rule out active TB disease. Once active TB disease has been ruled out, the individual should be:

(a) educated on risks of conversion to active TB disease; and

(b) referred for treatment for latent tuberculosis infection.

(6) Local health officers must ensure that a latent tuberculosis infection report form, provided by the department, is completed and submitted.

AUTH: 50-1-202, 50-17-103, MCA

IMP: 50-1-202, 50-17-102, 50-17-105, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rule I and proposing the amendment of ARM 37.114.101, 37.114.105, 37.114.203, 37.114.204, 37.114.313, 37.114.314, 37.114.526, 37.114.546, 37.114.571, 37.114.590, 37.114.1001, and 37.114.1015.

These proposed amendments are necessary in order to keep Montana communicable disease control administrative rules current with changing nationally notifiable disease surveillance investigation and control recommendations. Updated core references reflect changing technologies and knowledge of improved disease specific control measures.

NEW RULE I

The department is proposing New Rule I to address emerging public health threats linked to healthcare associated infection cases and outbreaks associated with multidrug-resistant organisms.

ARM 37.114.101

The department is proposing to amend ARM 37.114.101 to update and clarify terms, update referenced materials, address subjective terminology, and to incorporate new terminology.

ARM 37.114.105

The department is proposing to amend this rule by updating referenced documents and proposing a new reference regarding the management of Multidrug-Resistant Organisms in order to adapt to emerging public health threats.

ARM 37.114.203

The department is proposing to update this rule to align it with the nationally notifiable disease listing from a disease and terminology standpoint and to better define reportable diseases and outbreaks. The department is proposing to add latent tuberculosis, arsenic poisoning, mercury poisoning, and cadmium poisoning as reportable diseases and conditions under the rule.

ARM 37.114.204

The department is proposing to update this rule to align with the nationally notifiable disease listing from a disease and terminology standpoint and to better define reportable events while clarifying language. Reporting requirements have been added for latent tuberculosis, arsenic poisoning, mercury poisoning, and cadmium poisoning.

ARM 37.114.313

The department is proposing to update this rule to align it with the nationally notifiable disease listing from a disease and terminology standpoint and to specify submission requirements for specimens as they relate to reportable diseases and outbreaks.

ARM 37.114.314

The department is proposing to amend ARM 37.114.314 to clarify investigation coordination between local health jurisdictions and the department.

ARM 37.114.526

The department is proposing to clarify language in ARM 37.114.526 regarding the submission of biological materials associated with investigation of a case.

ARM 37.114.546

The department is proposing to amend this rule from being lead specific by expanding it to include other "toxic metals" proposed for mandatory reporting (e.g., arsenic and cadmium poisoning) that would be subject to the same types of local health department interventions as lead poisoning.

ARM 37.114.571

Changes in language to ARM 37.114.571 are proposed to clarify requirements for observation as opposed to quarantine to align with Montana Department of Livestock recommendations and requirements.

ARM 37.114.590

The department is proposing to amend this rule to better align with national disease reporting terminology.

ARM 37.114.1001

The department is proposing to amend this rule to address the addition of latent tuberculosis to the list of reportable diseases.

ARM 37.114.1015

The department is proposing to amend this rule to update references and to clarify the processes associated with reporting and case follow-up of reported latent tuberculosis cases.

Fiscal Impact

The department anticipates no fiscal impact regarding the proposed rulemaking.

The proposed rulemaking is estimated to affect: 58 local health jurisdictions (tribal/county), 46 Critical Access Hospitals, 14 Inpatient Hospitals, 3 outpatient hospitals, 84 laboratories, 7,304 physicians, and 2,109 mid-level practitioners.

6. The department intends to make these proposed rules effective as of January 1, 2020.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Gwen Knight, Department of Public Health and Human Services,

Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 20, 2019.

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

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

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

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

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State August 13, 2019.

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through LXI pertaining to) PROPOSED ADOPTION
private alternative adolescent)
residential programs or outdoor)
programs (PAARP))

TO: All Concerned Persons

1. On September 12, 2019, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services, 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 3, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PURPOSE (1) These rules establish licensing procedures and licensing requirements for private alternative adolescent residential or outdoor programs.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 1, L. of 2019

NEW RULE II PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: DEFINITIONS (1) "Adolescent" means any person between the ages of 10 and 18 years who is placed in a program by a parent/legal guardian. A program participant may be up to the age of 19 if they are enrolled in an accredited secondary school.

(2) "Case plan" means a specific plan for providing care, treatment, and services of any kind to a specific program participant.

(3) "Chemical restraint" means the use of a drug or medication that is used to control behavior or restrict the program participant's freedom of movement, and

which is not a standard treatment for the program participant's medical or psychiatric condition. The use of chemical restraint is prohibited in all programs.

(4) "Correspondence search" means opening, inspecting, and/or reading a program participant's mail or inspecting the contents of a package.

(5) "Department" means the Department of Public Health and Human Services.

(6) "Direct care staff" or "staff" means program personnel who directly participate in the care, supervision, and guidance of the program participants.

(7) "Discharge plan" means a realistic plan developed to transition the program participant home or to a less restrictive and appropriate placement with specific services identified and available.

(8) "Licensed addiction counselor" means a person licensed under Title 37, chapter 35, MCA.

(9) "Licensed health care professional" means a licensed physician, physician assistant, or advanced practice registered nurse who is practicing within the scope of the license issued by the Department of Labor and Industry.

(10) "Licensure Bureau" means the Quality Assurance Licensure Bureau.

(11) "Mechanical restraint" means the use of devices as a means of restricting a person's freedom of movement. The use of mechanical restraint is prohibited in all programs.

(12) "Mental health professional" means an individual licensed pursuant to Title 37, chapters 22, 23, and 37, MCA, as a clinical professional, social worker, or marriage and family therapist. A program may use a licensure candidate to provide mental health professional services with written consent of the program participant's parent/legal guardian.

(13) "Near miss" means an unplanned, unforeseen, or potentially dangerous situation where safety was compromised but that did not result in injury.

(14) "Pat-down search" means a body search done outside of a person's clothing with the intention of locating suspected contraband.

(15) "Personal property search" means a search which includes but is not limited to going through a program participant's personal property and/or room including closet, bed, desk, dresser drawers, backpacks, etc., with the intention of looking for contraband.

(16) "Physical escort" means the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a program participant to walk to a safe location.

(17) "Physical restraint" means a personal restriction that immobilizes or reduces the ability of the free movement of an individual's arms, legs, or head. Such term does not include physical escort. Physical restraint may be imposed only in emergency circumstances and only to ensure the immediate physical safety of the resident, a staff member, or others, when less restrictive interventions have been determined to be ineffective.

(18) "Program participant-to-staff ratio" means the number of program participants in care per each on-duty awake direct care staff member.

(19) "Seclusion" means a behavior control technique involving locked isolation in which the resident is physically prevented from leaving. Such term does not include time-out. Seclusion is prohibited in all programs.

(20) "Self-administration assistance" means providing necessary assistance to any program participant in taking their medication, including:

- (a) removing medication containers from secured storage;
- (b) providing verbal suggestions, promoting, reminding, gesturing or providing a written guide for self-administering medications;
- (c) handling a prefilled, labeled medication holder, labeled unit dose container, syringe, or original marked, labeled container from the pharmacy;
- (d) opening the lid of the above container for the resident;
- (e) guiding the hand of the program participant to self-administer the medication;

(f) holding and assisting the program participant in drinking fluid to assist in the swallowing of oral medications; and

(g) assisting with removal of a medication from a container for program participant with a physical disability which prevents independence in the act.

(21) "Serious incident" means suicide attempt, use of excessive physical force by staff, physical or sexual assault of a program participant by staff, or other resident, injury to a program participant which requires emergency medical care, known, or suspected abuse or neglect as defined in 41-3-102, MCA, of a program participant by staff or resident, a near miss or the death of a program participant, elopement, or an incident that involves law enforcement.

(22) "Time-out" means the restriction of a program participant for a period of time to a designated unlocked area from which the resident is not physically prevented from leaving for the purpose of providing the program participant the opportunity to regain self-control.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 2, L. of 2019, Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019

NEW RULE III PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: APPLICATION OF OTHER RULES (1) Any program that includes in its marketing, advertising, information packet, or other similar document reference to providing primary, inpatient, or residential chemical dependency treatment must be licensed by the Montana Department of Public Health and Human Services under Title 50, chapter 5, MCA.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 12, L. of 2019

NEW RULE IV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: LICENSING FEE SCHEDULE (1) Programs must submit payment for licensure annually.

(2) Licensing fees are based on the number of participants the program is licensed to serve as shown in the table below.

Number of participants	Licensing Fees
------------------------	----------------

1-10 participants	\$1,688
11-25 participants	\$4,345
26-50 participants	\$8,138
51 and more participants	\$13,313

(3) All fees provided for in this rule are nonrefundable and are not prorated for portions of the licensing period.

(4) All fees must be paid in full by July 1 of each year.

AUTH: Chap. 293, section 3(3), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 4, L. of 2019

NEW RULE V PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PROCEDURE FOR OBTAINING A LICENSE: ISSUANCE AND RENEWAL OF A LICENSE

(1) Application for a program license must be made on an application form provided by the department.

(2) Renewal applications must be received within 30 days prior to the expiration date of the current license.

(3) The program must submit all written program management policies and procedures to the department for approval with the initial application. Policies and procedures must comply with requirements outlined in this chapter.

(4) Upon receipt of a complete initial or renewal application, the department must conduct an on-site licensing survey to determine if the applicant meets all applicable licensing requirements. The on-site licensing survey may be unannounced.

(5) If the department determines during the survey that the applicant is out of compliance with the applicable licensing requirements, the department will notify the applicant of the specific deficiencies and the applicant must submit a written plan of correction within ten working days of the department's notification of noncompliance specifying how compliance will be made and maintained in the future.

(6) The department must receive all required information and approve the plan of correction prior to issuing a license.

(7) If all licensing requirements are met and the fee has been paid in full, the department may issue a license for a period of up to three years.

(a) A three-year license may be issued to a program that has received no deficiencies within the last licensed period and licensing survey.

(b) A two-year license may be issued to a program that has received minor deficiencies that do not significantly affect or threaten the health, safety, and welfare of any program participant.

(c) A one-year license may be issued to any program:

(i) that has been in operation for less than one year;

(ii) upon a change in ownership;

(iii) that has received deficiencies within the last licensed period or licensing survey that threaten the health, safety, and welfare of program participants or staff; or

(iv) that has received multiple deficiencies or repeat deficiencies.

(8) The department may in its discretion issue a provisional license for a period not to exceed six months to any license applicant which:

- (a) has met all licensing requirements for fire safety; and
- (b) has agreed in writing to comply fully with all licensing requirements established by these rules within the time period covered by the provisional license.

(9) Licensed premises must be open to inspection by the department or its authorized agent and access to all records must be granted to the department at all reasonable times.

(10) The program will only admit the number of program participants specified on the license.

(11) The current license must be publicly displayed at the program.

(12) A program's license is nontransferable.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 5, L. of 2019, Chap. 293, section 6, L. of 2019, Chap. 293, section 7, L. of 2019, Chap. 293, section 8, L. of 2019, Chap. 293, section 9, L. of 2019, Chap. 293, section 10, L. of 2019, Chap. 293, section 11, L. of 2019, Chap. 293, section 12, L. of 2019

NEW RULE VI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: LICENSE DENIAL, SUSPENSION, RESTRICTION, AND

REVOCAION (1) The department, after written notice to the applicant or program, may deny, suspend, cancel, reduce, modify, or revoke a license upon a finding of any of the following:

- (a) the program is not in compliance with fire safety standards;
- (b) the program is not in substantial compliance with other licensing requirements established by this chapter;
- (c) the program has made any misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility;
- (d) the program has failed to use payments for the support of the program participants;
- (e) the program, persons associated with the program, any staff member, or persons living at the program have been named as the perpetrator in a substantiated report of abuse or neglect;
- (f) the program, persons associated with the program, any staff member or persons living at the program have violated provisions of this chapter that resulted in child abuse or neglect;
- (g) the program, persons associated with the program or any staff member do not meet the requirements in [NEW RULE XXV];
- (h) the program failed to report an incident of abuse or neglect to the department or its local affiliate as required in 41-3-201, MCA;
- (i) it is determined on the basis of a department or law enforcement investigation that the program, persons associated with the program, any staff member, or anyone living in a program may pose any risk or threat to the safety or welfare of program participants;
- (j) the program has failed to provide an acceptable written plan of correction as specified in [NEW RULE V];

(k) the program did not pay the licensure fee as required in [NEW RULE IV];
or

(l) the program employs or has persons living at the program that do not have an approved background check as required in [NEW RULE XIII].

(2) At the discretion of the department and for protection of the program participants, program participants may be removed immediately upon receipt of a report of sexual or physical abuse or neglect by the program.

(3) Suspension or revocation of a license may be immediate upon a determination by the department that emergency action is required based on findings including, but not limited to the following situations:

(a) upon referral of suspected child abuse or neglect regarding a program, the initial investigation reveals that there are reasonable grounds to believe that a program participant may be in danger of harm;

(b) the department requests and is denied access to the program, program participants, or staff; or

(c) through a licensing investigation, it is determined that the program, persons associated with the program, any staff member, or persons living at the program have violated a licensing regulation that results in harm to a program participant which falls within the definitions of child abuse and neglect set out in 41-3-102, MCA, whether or not a criminal prosecution is initiated.

(4) Until the issuance of a contrary decision by the department the denial, suspension, cancellation, reduction, modification, or revocation of a license will remain effective and enforceable.

(5) Any person denied a license under the provisions of this subchapter, or whose license has been denied, suspended, canceled, reduced, modified, or revoked may request a hearing as provided in ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

(6) Nothing in these rules precludes the department from utilizing provisions of the Montana Administrative Procedure Act, including but not limited to summary suspension under 2-4-631(3), MCA.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 4, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 6, L. of 2019, Chap. 293, section 7, L. of 2019, Chap. 293, section 8, L. of 2019, Chap. 293, section 9, L. of 2019, Chap. 293, section 10, L. of 2019, Chap 293, section 11, L. of 2019, Chap. 293, section 12, L. of 2019

NEW RULE VII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: WRITTEN POLICY AND PROCEDURE (1) A current written policy and procedure manual that includes all policies required in this chapter and describes all services provided in the program, must be developed, implemented, and maintained at the program. The manual must be available to staff, program participants, program participants' parent/legal guardian, and the department and must be complied with by all program personnel and its agents.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE VIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: ADMISSIONS (1) The program will admit only those program participants for whom it has an operational program and who meet its admissions policies.

(2) The program must have written policies and procedures for screening all referrals.

(3) The program must have a written admissions policy and procedures which include:

(a) the age, sex, and behavioral and/or emotional needs of adolescents served;

(b) verifying of legal authority to place or remove a program participant from the program;

(c) a description of the intake process for the program participants;

(d) a description of the orientation provided to program participants; and

(e) an initial assessment of the program participant's emotional, medical, developmental, social, and behavioral status that must be conducted at the time of admission.

(4) The admission person or committee must review all preplacement referral information to determine the appropriateness of placement, including age and developmental needs of adolescents accepted into the program.

(5) The program's policies and procedures must provide for and encourage a preplacement process with the program participant and family.

(6) Placements may only be accepted from the parent/legal guardian of the program participant.

(7) The admissions policy may not limit contact with the program participant's family for any duration of time after admission.

(8) A program must have written orientation policies and procedures for admission to the program that include:

(a) a procedure for ensuring that each program participant receives a personal orientation to the program as soon as appropriate, but no later than 24 hours after admission;

(b) inventory of each program participant's belongings;

(c) behavioral expectations;

(d) information on privilege systems;

(e) discipline policy;

(f) health and safety procedures;

(g) program rules;

(h) information on the program's search policies, program participant rights, and grievance procedure; and

(i) emergency evacuation procedures, including designated escape routes.

(9) Documentation that is signed by both the program participant and the staff person(s) conducting the orientation must be placed in the program participant's file.

(10) A program must maintain a list of current program participants to ensure all participants are accounted for and that staffing requirements are met in all circumstances.

(11) A program must ensure placement of each participant with the Interstate Compact on the Placement of Children (ICPC), as provided in 41-4-101, MCA, and ARM 37.50.901.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE IX PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: DISCHARGE

(1) The program must assist the program participant and family in preparing for the participant's discharge from the program.

(2) Within ten business days of the discharge of a program participant from the program, a written discharge report must be completed, and include:

(a) the program participant's name, date of birth, admission and discharge dates, reason for placement and discharge, and name of parent/legal guardian;

(b) a written summary of services provided, including the program participant's participation and progress in the program, contact information of persons who conducted evaluations, and condition of the program participant at time of discharge;

(c) the program participant's educational status;

(d) medical, dental, and psychiatric care received during placement;

(e) follow-up health care required;

(f) current medications, dosage taken, number of times per day, and name of prescribing licensed health care professional;

(g) program participant's reaction to discharge and whether or not the discharge was planned or unplanned;

(h) recommendations for follow-up services;

(i) an up-to-date inventory of the program participant's clothing and personal belongings; and

(j) the signature of the staff member who prepared the report and the date of preparation.

(3) The discharge report must be maintained by the program in the participant's file and a copy must be provided to the parent/legal guardian within ten days of discharge. Written documentation that the discharge report was provided to the parent/legal guardian must be maintained in the resident's file.

(4) A program participant may only be discharged to the parent/legal guardian of the program participant.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE X PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: WRITTEN AGREEMENT

(1) The program must enter into a written

agreement with the program participant's parent/legal guardian at the time of admission into the program. The written agreement must include:

- (a) the terms of the placement, the responsibilities of the program, and the responsibility of the parent/legal guardian;
- (b) a statement describing specific services the program will provide;
- (c) a statement describing the program participant's rights and the program's grievance policy;
- (d) a statement explaining the program participant's responsibilities including house rules;
- (e) a statement describing the communication policy and transportation of the program participant to and from medical appointments and activities;
- (f) a statement explaining specific charges for care and an itemized statement of what expenses in addition to the cost for care will be charged, including fines, penalties, or late fees that will be assessed;
- (g) a statement that the agreed-upon rate will not be changed unless 30 days' advance written notice is given to the program participant's parent/legal guardian;
- (h) criteria for requiring transfer or discharge of the program participant;
- (i) the refund policy; and
- (j) date and signature of the administrator and program participant's parent/legal guardian.

(2) A copy of the agreement must be filed in the program participant's file and a copy must be provided to the program participant's parent/legal guardian.

(3) When there are changes in services, financial arrangements, or requirements governing the written agreement, a new written agreement must be executed, or the original agreement must be updated by addendum. New agreements and any addenda must be signed and dated by the administrator and program participant's parent/legal guardian.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL

PROGRAMS: CASE PLAN (1) Each program must develop a case plan for each program participant in care.

- (2) The case plan must include:
 - (a) the program participant's physical and medical needs;
 - (b) behavior management issues;
 - (c) mental health services when appropriate;
 - (d) measurable goals and objectives and corresponding time frames;
 - (e) the responsibilities of the program participant, staff, and parent/legal guardian for meeting the goals and objectives;
 - (f) education plans; and
 - (g) discharge plans and estimated discharge date.
- (3) The initial case plan must:
 - (a) be developed within seven business days after admission; and

- (b) be updated at least every 90 days from the day of development.
- (4) The program participant and the parent/guardian must be involved in developing and updating the case plan.
- (5) The program participant, parent/legal guardian, and program staff developing the case plan must sign and date the plan and plan updates.
- (6) A copy of the signed case plan must be provided to the parent/legal guardian and maintained in the program participant's file.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: RIGHTS AND GRIEVANCES (1) The program must have a written program participant rights policy that supports and protects the fundamental human, civil, constitutional, and statutory rights of all program participants. These rights must include:

- (a) to be treated with dignity and respect;
 - (b) freedom from abuse, neglect, and unnecessary physical restraint;
 - (c) freedom from corporal, cruel, harsh, or unnecessary punishment, name calling, infliction of pain, or excessive physical exercise;
 - (d) to adequate food, water, clothing, school supplies, and personal hygiene supplies;
 - (e) to receive care and services according to individual need;
 - (f) to educational services in accordance with Montana state law, if the program operates during the school year;
 - (g) freedom from discrimination;
 - (h) to a safe environment with respect for human dignity;
 - (i) to the protection of the privacy of information and records regarding each program participant and the participant's family;
 - (j) to communication and visitation privileges with family in person, by mail, or by phone;
 - (k) to be allowed to contact the Montana abuse reporting hotline to report allegations of abuse and neglect;
 - (l) to submit complaints and grieve alleged violations of these rules, including a prohibition on retaliation against a program participant for submitting such a complaint;
 - (m) to personal privacy, when it is not contrary to the treatment and safety needs of the program participant; and
 - (n) for consideration of the program participant's opinions and recommendations when developing the case plan.
- (2) The program must review the program participant rights policy with the program participant and parent/legal guardian at the time of admission.
- (a) The program staff reviewing the policy, the program participant, and parent/legal guardian of the program participant must sign a statement acknowledging the review.

(b) The signed statement must be maintained in the program participant's file.

(3) The program must have a written grievance policy which outlines the procedures to be followed by a program participant or parent/legal guardian in presenting a grievance to the program.

(4) The program must review the grievance policy with the program participant and parent/legal guardian at the time of admission.

(a) The program staff reviewing the policy, the program participant, and parent/legal guardian of the program participant must sign a statement acknowledging the review.

(b) The signed statement must be maintained in the program participant's file.

(5) Any written grievance report must be maintained in the program participant's file. The report must include the nature of the complaint, the date of the complaint, and a statement indicating how the issue was resolved.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: BACKGROUND CHECKS (1) All administrators, staff, volunteers, persons associated with the program, and any adult living at the program must complete a National Crime Information Center (NCIC) fingerprint-based background check from the Federal Bureau of Investigation. Results of the fingerprint-based background check must be documented prior to working or living at the program.

(2) All administrators, staff, volunteers, person associated with the program, and any adult living at the program must complete a Montana Department of Public Health and Human Services child protective services background check, and, if applicable, a tribal child protective services background check, and a tribal criminal background check prior to working or living at the program.

(3) If an applicant has lived outside the state within the past five years, a criminal and child protective background check must be conducted in every state that the applicant has resided in within the past five years.

(4) All administrators, staff, volunteers, persons associated with the program, and any adult working or living at the program must complete a Montana Sexual and Violent Offender Registry Check (Montana SVOR) at <https://app.doj.mt.gov/apps/svow/search.aspx> and A National Sexual and Violent Registry Check (NSOPW) at <https://www.nsopw.gov/>.

(5) Results of all required criminal and child protective background checks and registry checks must be documented prior to working or living at a program.

(6) The department will deny or revoke a license upon finding that:

(a) any administrator, staff, volunteer, person associated with the program, or any adult living at the program has been convicted by a court of competent jurisdiction of a felony or misdemeanor involving but not limited to homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor,

assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, prostitution, robbery, or burglary;

(b) any administrator, staff, volunteer, person associated with the program, or any adult living at the program has a conviction of a crime pertaining to children and families, including, but not limited to child abuse or neglect, incest, child sexual abuse, ritual abuse of a minor, felony partner and family member assault, child pornography, child prostitution, internet crimes involving children, felony endangering the welfare of a minor, felony unlawful transactions with children, or aggravated interference with parent-child contact;

(c) any administrator, staff, volunteer, person associated with the program, or any adult living at the program has within the previous five years a felony conviction of a drug-related offense, including but not limited to use, distribution, or possession of manufacture of dangerous drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture of, or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs; or

(d) any administrator, staff, volunteer, person associated with the program, or any adult living at the program has within the previous five years a conviction for misdemeanor partner and family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with a child, or a crime involving an abuse of the public trust; or

(e) any administrator, staff, volunteer, person associated with the program, or any adult living at the program has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.

(7) Any administrator, staff member, volunteer, persons associated with the program, or adult living at the program, who is charged with a crime involving children, physical or sexual violence against any person, or any felony drug-related offense and awaiting trial may not provide care or be present at the program pending the outcome of the criminal proceeding.

(8) No administrator, staff, volunteer, person associated with the program, or any adult living at the program shall have been named as a perpetrator in a substantiated report of child abuse or neglect or listed on the Montana Sexual and Violent Offender Registry or National Sex Offender Public Website.

(9) The program is responsible for assuring that the persons covered by this chapter have met these requirements prior to providing care.

(10) No administrator, staff, volunteer, person associated with the program, or any adult living at the program may pose any potential threat to the health, safety, and well-being of the program participants.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XIV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CHILD ABUSE OR NEGLECT AND SERIOUS INCIDENTS (1) A program must require each applicant, person associated with the program and staff member to read and sign a statement that clearly defines child abuse and neglect and outlines the individual's responsibility to report all known or suspected incidents

of child abuse or neglect of any program participant to the department within 24 hours.

(2) Any program staff or person associated with the program who knows or has reasonable cause to suspect that an incident of child abuse or neglect has occurred must report within 24 hours of the incident to the program administrator, or a person designated by the program administrator, and to the state child abuse hotline, (866) 820- 5437 as required in 41-3-201, MCA. The program must fully cooperate with any investigation conducted as a result of the report.

(3) A program must have written policies and procedures for handling any suspected incident of child abuse or neglect, including:

(a) a procedure for ensuring that the staff member suspected does not continue to provide direct care until an investigation is completed;

(b) a procedure for developing a safety plan approved by the department which protects the program participants and staff until the investigation is complete; and

(c) a procedure for taking appropriate disciplinary measures against any staff member involved in an incident of child abuse or neglect, including termination, retraining, or any other action geared towards the prevention of future incidents.

(4) Any serious incident involving a program participant must be reported in writing the next business day to the parent/legal guardian and to the department's licensure bureau. The report must include:

(a) the date and time of the incident;

(b) all program participants and staff member(s) involved;

(c) a description of the incident and the circumstances surrounding it; and

(d) a statement written by the staff member that was involved in the incident or witnessed the incident.

(5) A copy of the report must be maintained in the program participant's file.

(6) The program must cooperate with all licensing surveys and investigations, which may include private one-on-one interviews with staff and program participants.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PHYSICAL ENVIRONMENT (1) Each program must comply with all applicable federal, state, and local regulations, laws, and building codes.

(2) Adequate space must be provided for all phases of daily living, including recreation, privacy, group activities, and visits from family, friends, and community acquaintances.

(3) Program participants must have indoor areas of at least 40 square feet of floor space per program participant for quiet, reading, study, relaxing, and recreation. The minimum space requirement may not include halls, kitchens, and any rooms not used by program participants.

(4) A bedroom must contain at least 50 square feet of floor space per person. Bedrooms for single occupancy must have at least 80 square feet.

- (5) The maximum number of program participants per bedroom must not exceed four. The bedrooms must have floor to ceiling walls.
- (6) Program participants sharing a bedroom must be no more than 3 years in age apart.
- (7) The program must provide:
 - (a) at least one toilet for every four program participants; and
 - (b) one bathing facility for every six residents.
- (8) All rooms with toilets or shower and bathing facilities must have an operable window to the outside or must be exhausted to the outside by a mechanical ventilation system.
- (9) Each program participant must have access to a bathroom without entering another bedroom, the kitchen, or dining areas.
- (10) Hot and cold water must be available in all kitchens, bathrooms, and laundry. The temperature of hot water supplied to handwashing and bathing facilities must not exceed 120°F.
- (11) For adequate housekeeping the program must ensure that:
 - (a) the building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin;
 - (b) all electrical, mechanical, plumbing, fire protection, heating, and sewage disposal systems must be kept in operational condition;
 - (c) the floors, walls, ceilings, furnishings, and other equipment is clean and in good repair free of hazards, and offensive odors;
 - (d) cleaning equipment and supplies are provided in sufficient quantity to meet the housekeeping needs of the facility; and
 - (e) a maintenance policy and schedule, which describes the regular maintenance of the facility, is adhered to.
- (12) All rooms and hallways must have adequate lighting.
- (13) With respect to any conditions in existence in licensed programs prior to October 1, 2019, the specific requirements in this rule may be modified by the department to allow alternative arrangements that will provide that same level of safety to program participants and staff. In no case will the modification afford less safety than that which, in the discretion of the department, would be provided by compliance with the corresponding requirement in this rule.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019, Chap. 293, section 10, L. of 2019

NEW RULE XVI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: LAUNDRY AND BEDDING (1) If a program processes its laundry on site, it must:

- (a) use rooms solely for laundry purposes;
- (b) equip the laundry room with at least one mechanical washer and hot-air tumble dryer, handwashing facilities, mechanical ventilation to the outside, a fresh air supply, and a hot water supply system which supplies the washer with water of at least 160°F (71°C) during each use. If the laundry water temperature is less than

160°F, chemical and detergent suitable to the water temperature and the manufacturer's recommended product time of exposure must be utilized;

(c) sort and store soiled laundry in an area separate from that used to sort and store clean laundry;

(d) provide well maintained carts or other containers impervious to moisture to transport laundry, keeping those used for soiled laundry separate from those used for clean laundry;

(e) dry all bed linen, towels, and washcloths in a manner that protects against contamination;

(f) protect clean laundry from contamination; and

(g) ensure that program staff handling laundry cover their clothes while working with soiled laundry, use separate clean covering for their clothes while handling clean laundry, and wash their hands both after working with soiled laundry and before they handle clean laundry.

(2) If laundry is cleaned off-site, the program must utilize a commercial laundry which satisfies the requirements stated in (1).

(3) A program must provide each program participant with:

(a) a bed with a moisture-proof mattress or moisture-proof mattress cover and mattress pad;

(b) clean bed linen in good condition;

(c) a supply of clean bed linen on hand sufficient to change beds often enough to keep them clean, dry, and free from odors;

(d) supply each program participant at all times with clean towels and washcloths; and

(e) enough blankets to maintain warmth while sleeping.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019

NEW RULE XVII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: WATER SUPPLY (1) An adequate and potable supply of water must be provided.

(2) Before a license may be issued, a program using an individual, shared, or multiple user water supply must submit the following to the department or its designee:

(a) satisfactory coliform bacteria and nitrate test results as specified in ARM Title 17, chapter 38, subchapter 2; and

(b) the results of an onsite sanitary survey of the water supply system to detect sanitary deficiencies.

(3) A supplier of an individual, shared, or multiple user water supply shall conduct a coliform bacteria test of the system at least twice a year with one sample collected between April 1 through June 30 and the second sample collected between August 1 through October 31 and conduct a nitrate test of the system at least once every three years. Water tests must be analyzed at a certified laboratory. A supplier must keep sampling result records for at least three years.

(4) A public water supply system must be constructed and operated in accordance to current applicable laws as regulated by the Montana Department of Environmental Quality.

(5) Nonpotable water sources must be marked "not for human consumption."

(6) Plumbing must be installed and maintained in a manner to prevent cross connections between the potable water supply and any nonpotable or questionable water supply or any source of pollution through which the potable water supply might be contaminated. The potable water system must be installed to preclude the possibility of backflow. A hose may not be attached to a faucet unless a backflow prevention device is installed.

(7) A water supply system is determined to have failed and requires treatment, replacement, repair, or disinfection, when the water supply becomes unsafe, or when it exceeds the maximum contaminant levels specified in ARM Title 17, chapter 38, subchapter 2. A water supply system is inadequate when it is found to be less than 20 psi measured at the extremity of the distribution line during the instantaneous peak usage.

(8) Extension, alteration, repair, or replacement of a water supply system or development of a new water supply system must be in accordance with all applicable state and local laws.

(9) Bottled and packaged potable water must be obtained from a licensed and approved source and be handled and stored in a way that protects it from contamination.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019

NEW RULE XVIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: SEWAGE SYSTEM AND SOLID WASTE (1) An adequate and safe wastewater system must be provided for conveying, treating, and disposing of all sewage. Immediate measures must be taken to alleviate health and sanitation hazards caused by wastewater at the program when they occur.

(2) All sewage, including liquid waste, must be disposed of by a public sewage treatment and disposal system constructed and operated in accordance to applicable state and local laws.

(3) A wastewater system has failed and requires replacement or repair if any of the following conditions occur:

(a) the system fails to accept, treat, or dispose of wastewater as designed;

(b) effluent from the wastewater system contaminates a potable water supply or state waters; or

(c) the wastewater system is subjected to mechanical failure, including electrical outage, or collapse or breakage of a septic tank, lead line, or drain field line.

(4) Extension, alteration, replacement, or repair of any wastewater system must be done in accordance with all applicable state and local laws.

(5) Mop water or soiled cleaning water may not be disposed of in any sink other than a mop or utility sink or a toilet.

(6) Solid waste must be collected, stored, and disposed of in a manner that does not create a sanitary nuisance. Solid waste must be removed from the premises at least weekly to a licensed solid waste disposal facility.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019

NEW RULE XIX PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: FIRE SAFETY (1) The department adopts and incorporates by reference the occupancy designation/classification group R-3 of the International Fire Code (IFC), 2018, which sets forth the fire safety regulations that apply to all programs. A copy of the IFC definitions and requirements for R-3 occupancies may be obtained from the Fire Prevention and Investigation Section of the Department of Justice, 2225 11th Avenue, Helena, MT 59620.

(2) The state fire marshal must annually certify a program for fire and life safety.

(3) Smoke detectors approved by a recognized testing laboratory must be located on each level of the facility, at the top of stairways, in any bedroom, in any hallway leading to bedrooms, and in areas requiring separation as set forth in Section 907.2.11, IFC.

(4) Carbon monoxide detectors installed in facilities with fuel-burning appliances or with attached garages must be installed per manufacture recommendations according to Section 1103.9, IFC.

(5) A workable portable fire extinguisher, with a minimum rating of 2A10BC, must be located on each floor of the facility. Fire extinguishers must be:

(a) mounted on the wall not to exceed five feet from handle to floor and no closer than four inches from the floor;

(b) no more than 75 feet from each other;

(c) inspected, recharged, and tagged at least once a year by a person certified by the state to perform such services; and

(d) not obstructed or obscured from view.

(6) Program staff must check battery operated smoke detectors at least once each month and the batteries must be replaced at least once each year.

Documentation, including the date and the signature of the person checking or replacing the batteries, must be maintained at the facility.

(7) Integrated dial-out-smoke detection systems that are monitored from an outside source must have the date showing the most recent maintenance. Maintenance must occur once per year.

(8) Orientation for staff and program participants must include instruction of the program's fire evacuation procedure. The fire evacuation procedure must be posted in a conspicuous place in the program.

(9) All exits must be clear and unobstructed at all times.

(10) Paint, flammable liquids, and other combustible material must be kept in locked storage away from heat sources or in outbuildings not used by the program participants.

(11) The program must conduct at least four fire drills annually, no closer than two months apart, with at least one drill occurring on each shift. Drill

observations must be documented and maintained in the program files for at least three years. The documentation must include:

- (a) time and location of the drill;
- (b) identification of participating staff;
- (c) problems identified during the drill; and
- (d) steps taken to correct such problems.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019, Chap. 293, section 10, L. of 2019

NEW RULE XX PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: EMERGENCY AND EVACUATION PLANS

(1) A program must have and follow a written emergency plan developed in conjunction with emergency services in the community, and it must include specific procedures for evacuations, disasters, medical emergencies, hostage situations, casualties, missing program participants, and other serious incidents identified by the program.

(2) The emergency plan must include:

- (a) designation of authority and staff assignment;
- (b) a specific evacuation plan;
- (c) provisions for transportation and relocation of program participants when necessary;
- (d) provisions for supervision of program participants after an evacuation or relocation;
- (e) provisions for the instruction of all participants on how to respond in the case of an emergency;
- (f) provisions for arranging medical care and notifying the program participant's licensed health care professional, and parent/legal guardian; and
- (g) maintenance and repair of essential equipment including a two-way radio.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: SAFETY

(1) A program must have written policies and procedures on safety and equipment.

(2) There must be a first aid kit with sufficient supplies available at all times.

A first aid kit must:

- (a) be readily available on site as well as in all vehicles used by the program;
- (b) meet the standards of an appropriate national organization for the activity being conducted and the location and environment being used;
- (c) be reviewed with new staff for contents and use; and
- (d) be inventoried on a quarterly basis.

(3) Policies and procedures must be in place for the safe use and storage of fuels and all heat sources, including inaccessibility to program participants when not being used under the direct supervision of staff.

(4) Cleaning materials, flammable liquids, detergents, aerosol cans, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to program participants. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the program participants. Bio-contaminants including blood, bodily fluids, and other infectious materials must be properly disposed of.

(5) No extension cord will be used as permanent wiring. All appliances, lamp cords, and exposed light sockets must be suitably protected to prevent electrocution.

(6) Any pet or animal present at the program indoors or outdoors, must be in good health, show no evidence of carrying disease, and be a friendly companion for the program participants. The provider is responsible for maintaining the animal's vaccinations and vaccination records. These records must be made available to the department upon request. The program must make reasonable efforts to keep stray animals off the premises.

(7) Emergency information for program participants must be easily accessible at the program. Emergency information for each program participant must include:

(a) the name, address, telephone number, and relationship of a designated person to be contacted in case of an emergency;

(b) the name, address, telephone number of the program participant's licensed health care professionals or source of health care;

(c) the name, address, telephone number, and relationship of the person able to give consent for emergency medical treatment;

(d) documentation of any medical conditions that may affect care including but not limited to known allergies;

(e) a signed release for emergency medical treatment from the parent/legal guardian; and

(f) a copy of the program participant's current medical insurance card or insurance information when a card is not available to providers.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CASE RECORDS (1) A program must maintain a written case record for each program participant which contains administrative, treatment, and educational data from the time of admission until the time the program participant is discharged from the program.

(2) The case record must include:

(a) the name, sex, and birth date of the program participant;

(b) the name, address, and telephone number of the parent/legal guardian of the program participant;

(c) date of admission;

(d) current immunization records and documentation of exemptions per program policy;

- (e) date of discharge, person and signature whom the program participant was released to, and signed discharge summary;
 - (f) all documents related to the referral of the program participant to the program;
 - (g) current custody and parent/legal guardianship documents or other documents verifying legal custody of the parent/legal guardian placing the program participant;
 - (h) the program participant's court status, if applicable;
 - (i) a copy of the program participant's birth certificate;
 - (j) consent forms signed by the parent/legal guardian prior to placement allowing the program to authorize all necessary medical care, routine tests, immunization, and emergency medical or surgical treatment;
 - (k) cumulative health records including medical history provided by the parent/legal guardian;
 - (l) education records and reports, including but not limited to report cards and individual education plan (IEP) reports;
 - (m) treatment or clinical records and reports;
 - (n) records of special or serious incidents;
 - (o) case plans, treatment plans, all updates and related material;
 - (p) social assessment that is current to date of placement; and
 - (q) an immediate needs assessment and assigned responsibilities.
- (3) A copy of the signed physical examination form must be maintained in the file for outdoor programs.
- (4) Program participant records must be maintained at the program for a minimum of six years.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. 2019, Chap. 293, section 5, L. 2019, Chap. 293, section 9, L. 2019

NEW RULE XXIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CONFIDENTIALITY OF RECORDS AND INFORMATION

- (1) All records maintained by a program and all personal information made available to a program pertaining to a program participant must be kept confidential and are not available to any person, agency, or organization except as specified in (2) and (3).
- (2) All records pertaining to a program participant are available upon request to:
- (a) the program participant's parent/legal guardian or attorney absent specific and compelling reasons for refusing such records;
 - (b) a court with continuing jurisdiction over the placement of the program participant or any court of competent jurisdiction issuing an order for such records;
 - (c) a program participant to whom the records pertain, absent specific and compelling reasons for refusing specific records; or
 - (d) an adult who was formerly the program participant in care to whom the records pertain.

(3) Records pertaining to program participants must be available to the department for the purposes of licensing, relicensing, or investigating a complaint of the program.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019, Chap. 293, section 11, L. of 2019

NEW RULE XXIV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: REPORTS (1) The program must submit to the department, upon its request, any reports required by federal law, state law, or regulations.

(2) The program must report any of the following changes in writing to the department's licensure bureau, prior to the effective date of the change:

- (a) a change of administrator;
- (b) a change in location of which the department must approve prior to the move;
- (c) a change in the name of the program; or
- (d) any significant change in the program policies or procedures or services.

(3) Runaways shall be reported immediately to the police and parent/legal guardian and within the next working day to the licensure bureau.

(4) Disasters or emergencies which require relocation of program participants or closure of the program must be reported to the licensure bureau within the next working day.

(5) Any serious incident as defined in this subchapter must be reported in writing to the licensure bureau within 24 hours of the incident.

(6) Any fire or other incident that caused significant damage to the property must be reported to the licensure bureau within 24 hours of the incident.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 8, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: GENERAL REQUIREMENTS FOR ALL ADMINISTRATORS, STAFF MEMBERS, AND VOLUNTEERS (1) A program must have written personnel and program policies and procedures covering the following items:

- (a) screening procedure for all applicants;
 - (b) job qualifications for all positions;
 - (c) job descriptions for all positions;
 - (d) supervisory structure; and
 - (e) performance evaluations.
- (2) In addition to the specific requirements set out in this chapter, all staff working in a program must:

- (a) be at least 21 years of age;
- (b) have a high school diploma or GED; and
- (c) be physically, mentally, and emotionally competent to care for program participants.

(3) The department may require an evaluation or medical examination, a signed authorization for release of medical records, or both from any program administrator, staff member, or volunteer if there are grounds to believe these individuals have engaged in behaviors which may place the program participants at risk of harm.

(4) Any administrator, staff member, volunteer, or other person whose behavior or health status endangers the program participants may not be allowed at the program.

(5) Program volunteers must:

- (a) not be included in the program participant-to-staff ratios;
- (b) be under the supervision of program staff;
- (c) follow written policies and procedures developed by the program defining the responsibilities, limitations, and supervision of volunteers;
- (d) complete all required background checks; and
- (e) be provided orientation and initial training. The training must include orientation on all program policies and procedures.

(6) All program staff who transport program participants must have a valid driver's license and, while transporting program participants, follow all laws applicable to driving in Montana.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXVI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PERSONNEL RECORDS

(1) The program is responsible for maintaining a file on each administrator, person associated with the program, staff member, or volunteer. Files may be inspected by the department at any time. If the file is not maintained at the program it must be available to the department within 24 hours of the request.

(2) The file must contain:

- (a) application for employment;
- (b) written results of at least two references;
- (c) record of orientation and ongoing training;
- (d) periodic performance evaluations;
- (e) a copy of current credentials, certification, or professional licenses required to perform the duties described in the job description;
- (f) documentation of criminal background check as specified in [NEW RULE XIII];
- (g) documentation of child protective services background checks as specified in [NEW RULE XIII];
- (h) documentation of Montana and National registry checks as specified in [NEW RULE XIII];
- (i) a copy of current driver's license for employees transporting program participants; and
- (j) any other employee records required by this subchapter.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXVII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: QUALITY ASSESSMENT

(1) The program must implement and maintain an active quality assessment program for improving policies, procedures, and services. At a minimum, the quality assessment program must include procedures for:

(a) conducting program participant satisfaction surveys at least annually which are maintained and filed at the program;

(b) maintaining records on the occurrence, duration, and frequency of physical restraints used; and

(c) reviewing, on an ongoing basis, serious incident reports, grievances, complaints, medication errors, and the use of physical restraints with special attention given to identifying patterns and making necessary changes in how services are provided.

(2) The program must prepare and maintain, on file, an annual report including improvements made as a result of the quality assessment activities specified in this rule.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXVIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: ADMINISTRATOR

(1) Each program must employ an administrator that is responsible for the day-to-day operation of the program.

(2) The administrator must have formal training and/or experience in residential or outdoor programs and demonstrates the ability to perform the functions and duties required in these rules.

(3) In the absence of the administrator, a staff member must be designated to oversee the operation of the program during the administrator's absence. The administrator or designee must be in charge, on call, and physically available on a daily basis as needed, and must ensure there are sufficient, qualified staff so that the care, well-being, health, and safety needs of the program participants are met at all times.

(a) If the administrator will be absent from the program for more than 30 continuous days, the department must be given written notice of the individual who has been appointed the designee. The appointed designee must meet the requirements for an administrator.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXIX PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: STAFF (1) Each program must maintain the minimum program participant to awake-staff ratios:

- (a) from 7:00 a.m. to 11:00 p.m., eight program participants to one staff; and
 - (b) from 11:00 p.m. to 7:00 a.m., or any other reasonable eight-hour period of time when program participants are generally sleeping, 12 program participants to one staff.
- (2) Outdoor programs must meet staff ratios defined in [NEW RULE LII].
- (3) During regular school hours when program participants are not normally present, at least one on-call staff must be available for duty within 30 minutes of notification that they are needed.
- (4) The program must have a policy that specifies a nighttime safety protocol that outlines program staff responsibility for monitoring the program participants.
- (5) Sufficient staff must be employed to meet the supervision needs of the program participants and implement each program participant's individualized case plan.
- (6) Mental health professionals must be employed in sufficient number to meet the mental health needs of program participants as outlined in the program description.
- (7) A registered nurse or licensed practical nurse must be employed to meet the needs of the program participants as outlined in the program description.
- (8) Any program that includes in its program description, marketing, advertising, information packet, or other similar document reference to providing chemical dependency services must employ licensed addiction counselors in sufficient number to meet the needs of the program participants.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXX PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: STAFF TRAINING (1) A program must have written policies, procedures, and initial and ongoing training curriculum that meets the minimum requirements in this rule.

- (2) Programs must provide adequate and timely training to ensure the safety of program participants.
- (3) All program staff must complete a minimum of 24 hours of orientation training consisting of the following minimum requirements:
- (a) an overview of the program's policy, procedures, organization, and services;
 - (b) mandatory child abuse reporting laws;
 - (c) behavioral management techniques;
 - (d) fire safety, including emergency evacuation routes;
 - (e) confidentiality;
 - (f) suicide prevention;
 - (g) emergency medical procedures;

- (h) report writing including the development and maintenance of logs and journals;
 - (i) program participant rights as outlined in [NEW RULE XII]; and
 - (j) hours required for on-the-job training.
- (4) Orientation training must be completed and documented before the staff person may count in the staff ratio as specified in [NEW RULE XXIX] and [NEW RULE LII].
- (5) All program staff must complete the following certification training within six months of hire:
- (a) the use of de-escalation training and methods of managing program participants as described in the program's policies and [NEW RULE XXXVII];
 - (b) first aid and hands-on CPR certification; and
 - (c) maintain and update these trainings and certifications as required.
- (6) Program staff may not work alone without completing the requirements of (5).
- (7) The program must provide ongoing training for staff to maintain and improve proficiency in their knowledge and skills. Training must be a minimum of 20 hours annually thereafter and appropriate for the level of care provided.
- (8) All training must be documented and kept on file for each staff member, administrator, and volunteer.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PHYSICAL CARE (1) Every program participant must have access to the services of at least one licensed health care professional as defined in 50-5-101, MCA.

(2) Medical, dental, psychiatric, psychological care, and counseling services will be arranged for the program participant as needed.

(3) If a program participant has not received a complete physical examination within a year prior to placement, within 30 days after admission the program must arrange for a complete physical examination and annually thereafter.

(4) If a program participant has not had a dental examination within a year prior to placement, the program must arrange for the program participant to have a dental examination within 90 days after admission. All necessary dental work must be completed, and checkups must be arranged for the program participant at least annually.

(5) If a program participant has not had an eye examination within a year prior to placement, the program must arrange for the program participant to have an eye examination within 90 days after admission. All necessary checkups must be arranged for the program participant at least annually.

(6) Provisions for medical, dental, or vision care must be made by the provider immediately upon the licensed health care professional's recommendation with notification to the parent/legal guardian.

(7) Documentation of all required services must be in the program participant's file.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: MEDICATION STORAGE AND ADMINISTRATION (1) A program must have written policies and procedures regarding the storage, administration, and disposal of prescription, nonprescription, and over-the-counter medication.

(2) All medication must be kept in a locked nonportable container, stored in its original container with the original prescription label. For medications taken on outings, all medication must be in the possession of a staff member trained to assist with the self-administration of medications.

(3) Staff who assist with self-administration must be trained to assist in proper medication procedures. Training must be documented in each staff member's personnel file.

(4) All prescription medications must be ordered by licensed health care professionals working within the scope of their practice. All prescription orders must contain the dosage to be given.

(5) Psychotropic medication is prohibited unless a licensed health care professional working within the scope of that professional's practice determines that the medications are clinically indicated.

(6) Under no circumstances may psychotropic or any other prescription or over-the-counter medication be given for disciplinary purposes, for the convenience of the staff, or as a substitute for other appropriate treatment services.

(7) A written record of all medications administered to a program participant must be maintained and include:

- (a) program participant's name;
- (b) name and dosage of the medication;
- (c) the date and time the medication was taken or was refused by the program participant;
- (d) name of the staff member who assisted in the self-administration of the medication; and
- (e) documentation of any medication errors, results of errors, and any effects observed.

(8) Prescribed medication may not be stopped or changed in dosage or administration without first consulting with a licensed health care professional. Results of the consultation must be recorded in the medication record.

(9) Parent/legal guardian must be notified of all medications prescribed to program participant including medication changes. Documentation of notification must be maintained in the medication record.

(10) All unused and expired medication must be properly disposed of and documented in the medication record.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CARE AND GUIDANCE (1) A program must provide to each

program participant sufficient staff to ensure:

- (a) appropriate medical care, supervision, safety, treatment, and guidance;
- (b) opportunities for educational, social, and cultural growth through suitable reading materials, toys, activities, and equipment; and
- (c) opportunities to associate with peer groups in school and community settings.

(2) A program must arrange for contact with each program participant's parent/legal guardian and approved family members.

(3) The program must assist the parent/legal guardian with referral for support services.

(4) The provider must assist the program participant and, when appropriate, the family, in preparing for the program participant's discharge.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXIV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: NUTRITION (1) A program must provide for or serve three regular,

well-balanced meals per day, and snacks. Foods must be served in amounts and a variety sufficient to meet the nutritional needs of each program participant.

(2) Special diets must be provided for program participants as ordered in writing by a licensed health care professional. Such orders must be kept on file by the program.

(3) Food may not be altered, modified, restricted, or prohibited as a means of punishment, discipline, or as a behavioral modification technique.

(4) Records of menus as served must be filed at the program for three months after the date of service for review by the department.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: FOOD PREPARATION AND HANDLING (1) Safe food handling and

preparation practices must be followed in all programs. All food must be from an approved source and must be transported, labeled, stored, covered, prepared, and served in a sanitary manner to prevent contamination.

(2) The program must have conveniently located hand washing facilities, supplied with liquid hand soap, disposable towels kept clean in a dispenser, and cleanable trash can.

(3) Any staff person or program participant handling or preparing food must thoroughly wash hands, wrists, and exposed arms with soap and warm running water for at least 20 seconds:

- (a) before and after handling food;
- (b) after using the bathroom; and
- (c) after handling raw food such as raw meat, uncooked eggs, and unwashed fruits and vegetables.

(4) General food safety requirements must include:

- (a) all canned foods and dry ingredients must be stored in a designated area;
- (b) food cannot be stored on the floor;
- (c) food must be free from adulteration or other contamination and must be safe for human consumption;
- (d) food that is not stored in original containers must be dated, labeled, and covered;
- (e) all food must be cooked and reheated to the recommended temperature;
- (f) milk and other dairy products must be pasteurized;
- (g) use of home canned foods other than jams, jellies, and fruits is prohibited;
- (h) use of thermometers is required to check food temperatures;
- (i) cold storage of potentially hazardous food must be at 41°F or below;
- (j) frozen food must be kept frozen;
- (k) hot storage of potentially hazardous food must be 135°F or above;
- (l) each type of food must be stored and arranged so that cross-

contamination of one type with another is prevented; and

(m) raw fruits and vegetables must be thoroughly washed in potable water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form. Fruits and vegetables may be washed by using chemicals approved by the Environmental Protection Agency (EPA).

(5) General health and safety requirements include the following:

(a) Use clean cutting boards, knives, can openers, and other equipment and utensils for each type of food preparation to prevent cross-contamination.

(b) A person with symptoms of a communicable disease that can be transmitted to foods or who is a carrier of such a disease may not work with food, clean equipment, or clean utensils.

(c) When the regulatory authority has reasonable cause to suspect possible disease transmission within a program, the program must take appropriate action in accordance with ARM Title 37, chapter 114, regarding communicable disease control.

(6) Equipment and utensil sanitation requirements include the following:

(a) Kitchenware, tableware, and food contact surfaces must be washed, rinsed, and completely dried after each use.

(b) Moist cloths used for wiping kitchen and dining area surfaces, equipment, and utensils must be placed in chemical sanitizer solution frequently enough and be of sufficient strength to maintain 200 to 400 parts per million (ppm) available chlorine or equivalent.

(c) Sinks used for food preparation must be cleaned before beginning the preparation of the food.

(7) A domestic style dishwasher may be used only if it is equipped with a heating element and the following conditions are met:

(a) The dishwasher must be capable of washing and sanitizing all dishware, utensils, and food service equipment normally used for the preparation and service of a meal in one cycle.

(b) The dishwasher must have water at a temperature of at least 165°F when it enters the machine, if it uses hot water for sanitization.

(c) If it uses a heat cycle with a heating element for sanitization, the dishwasher must be allowed to run through the entire cycle before it is opened.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXVI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PERSONAL NEEDS (1) The program must ensure that each program participant has clothing suitable to the program participant's age and size and comparable to the clothing of other adolescents in the community.

(2) Program participants must have some choice in the selection of their clothing.

(3) A program must provide necessary supplies and train program participant's in personal care, hygiene, and grooming.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXVII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: BEHAVIOR MANAGEMENT POLICIES (1) A program must have written behavior management policies and procedures which include a description of the model, program, or techniques to be used with program participants. The program must have policies addressing discipline, therapeutic de-escalation in crisis situations, crisis intervention and physical restraint, and time-out. Behavior management must be based on an individual assessment of each program participant's needs, stage of development, and behavior. It must be designed with the goal of teaching the program participant to manage their own behavior and be based on the concept of providing effective treatment by the least restrictive means.

(2) The behavior management policies and procedures must prohibit:

(a) the use of physical force, mechanical, chemical, or physical restraint as discipline;

(b) pain compliance, aversive conditioning, and use of pressure point techniques;

(c) placing of anything in or on a program participant's mouth;

(d) cruel or excessive physical exercise, prolonged positions, or work assignments that produce unreasonable discomfort;

(e) verbal abuse, ridicule, humiliation, profanity, and other forms of degradation directed at a program participant's family;

- (f) physical discipline of any means including but not limited to hitting, shaking, biting, or pinching;
- (g) locked confinement or seclusion;
- (h) withholding of necessary food, water, clothing, shelter, bedding, rest, medications as prescribed, medical care, or toilet use;
- (i) denial of visits or communication with the program participant's family;
- (j) isolation as punishment; and
- (k) any other form of punishment or discipline which subjects a program participant to pain, humiliation, or unnecessary isolation or restraint.

(3) If program policies and procedures allow for disciplining a group of program participants for actions of one participant, the policies and procedures must clearly prescribe the circumstances and safeguards under which disciplining the group is allowed.

(4) Any staff person involved in or witnessing an infraction of this rule shall complete an incident report clearly detailing the events of the infraction. The report must be completed prior to the end of the involved staff person's shift.

(5) A copy of the incident report must be placed in the program participant's file and the incident must be reported to the licensure bureau and parent/legal guardian within 24 hours of its occurrence.

(6) An authorized staff person must be notified of the incident immediately and:

- (a) begin an investigation within 24 hours of the incident; and
 - (b) complete a written report and submit it to the licensure bureau within two days of completion of the investigation.
- (7) An investigation of the incident may be conducted by the department.
- (8) A complete report of any investigation conducted by the program must be placed in the provider's records and must be available for inspection by the department.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXVIII PRIVATE ALTERNATIVE ADOLESCENT

RESIDENTIAL PROGRAMS: TIME-OUT (1) A program must develop a written time-out policy and procedures which clearly provide:

- (a) length of time the program participant may remain in time-out which must be age appropriate;
 - (b) guidelines for staff observation of the program participant when in time-out;
 - (c) documentation required for each time-out that is directed by staff;
 - (d) purpose of time-out; and
 - (e) staff training pertaining to the use of time-out.
- (2) Staff may direct a program participant to time-out when the behavior is disruptive to the program participant's ability to learn, to participate appropriately, or to function appropriately with other participants and the activity, and when the other

de-escalation techniques have failed. Restraint, seclusion, or confinement may not be used as part of time-out procedures.

(3) Time-out may not be used as punishment.

(4) Program participants placed in time-out must be reintroduced to the group in a sensitive and nonpunitive manner as soon as control is regained.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXIX PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: USE OF CRISIS INTERVENTION AND PHYSICAL RESTRAINT STRATEGIES

(1) The program must have written policies and procedures governing the appropriate use of crisis intervention and physical restraint methods if used by the program.

(2) The crisis intervention and physical restraint policies and procedures must include:

(a) crisis prevention and verbal and nonverbal de-escalation techniques are the preferred methods and must be used first to manage behavior;

(b) all staff must be trained in the program's crisis intervention, de-escalation techniques, and physical restraint methods;

(c) physical restraint may only be used to safely control a program participant until the program participant can regain control of their own behavior;

(d) physical restraint must only be used in the following circumstances:

(i) when the program participant has failed to respond to de-escalation techniques and it is necessary to prevent harm to the program participant or others; or

(ii) when a program participant's behavior puts themselves or others at substantial risk of harm and the program participant must be forcibly moved;

(e) physical restraint must be used only until the program participant has regained control and must not exceed 15 consecutive minutes. If the program participant remains a danger to self or others after 15 minutes, the participant's record must include written documentation of attempts made to release the program participant from the restraint and the reasons that continuation of restraint is necessary; and

(f) physical restraint may be used only by staff who are documented to be specifically trained in crisis intervention and physical restraint techniques.

(3) The program policies and procedures must require the documentation of:

(a) the specific behavior which required the physical restraint;

(b) the specific attempts to de-escalate the situation before using physical restraint;

(c) the length of time the physical restraint was applied including documentation of the time started and completed;

(d) the identity of the specific staff member(s) involved in administering the physical restraint;

(e) the type of physical restraint used;

(f) any injuries to the program participant resulting from the physical restraint;

(g) debriefing completed with the staff and program participant involved in the physical restraint; and

(h) notification of the parent/legal guardian within 24 hours of restraint.

(4) Program policies and procedures must require that whenever a physical restraint has been used on a program participant more than four times within a seven-day period, the program administrator or designee will review the program participant's situation to determine the suitability of the program participant to remain in the program, whether modification of the case plan is warranted, or whether staff need additional training in alternative therapeutic behavior management techniques. The program must take appropriate action as a result of the review.

(5) Program policies and procedures must prohibit the application of a physical restraint if a program participant has a documented physical condition that would contradict its use, unless a health care professional has previously and specifically authorized its use in writing. Documentation must be maintained in the program participant's record.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XL PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: SEARCHES (1) The provisions of this rule apply to all searches by program staff of the program participant's person and personal property, including searches of personal correspondence. The facts and circumstances supporting a determination of reasonable cause for the search must be documented in the program participant's file.

(2) Program participants may not be subjected to any search except as follows:

(a) there is reasonable cause to believe that the search will result in discovery of contraband;

(b) there is reasonable cause to believe that the search is necessary to alleviate a threat of harm to the program participant, other individuals, or staff; or

(c) there is a court order/parole order in the program participant's case record allowing for searches.

(3) The program must have written policy and procedures relating to searches, including pat-down searches, personal property searches, correspondence searches, urinalysis testing, and breathalyzer testing. The policies must include the following:

(a) a procedure for documenting all searches, reasons for the search, who conducted the search, and the results of the search;

(b) notification of the search policy to parent/legal guardian and program participant at time of admission;

(c) a protocol for conducting personal property searches when the program participant is not available to be present for the search;

(d) the consequences to a program participant when contraband is located;

(e) description of what happens to contraband which has been located; and

(f) pat-down searches on program participants, which must be conducted by staff persons of the same sex.

(4) Staff must be trained in the proper protocol for all searches. Training must be documented in staff's personnel record.

(5) Program participants may not be subjected to any of the following intrusive acts:

- (a) strip searches;
- (b) body cavity searches; or
- (c) video surveillance except in common areas such as the living room, kitchen, and hallways.

(6) The program must have written policies and procedures prior to use of urinalysis testing for the purpose of determining drug and alcohol use which include:

- (a) procedures for obtaining samples for urinalysis testing;
- (b) procedures for processing urinalysis testing; and
- (c) consequence to the program participant when a urinalysis is positive.

(7) The program must have written policies and procedures prior to use of breathalyzer testing for the purpose of determining drug and alcohol use which include:

- (a) breathalyzer testing may only be conducted by appropriate law enforcement personnel and probation, parole, or correctional officer; and
- (b) consequences to the program participant when a urinalysis is positive.

(8) Program participants may not be subjected to urinalysis or breathalyzer testing unless the testing:

- (a) has been ordered by a court;
- (b) is required pursuant to a case plan for monitoring alcohol use, as approved by the parent/legal guardian; or
- (c) is requested by the program participant's parent/legal guardian, probation, parole, or correctional officer.

(9) The program must notify the program participant's parent/legal guardian within 24 hours of every search, urinalysis testing, or breathalyzer testing performed on the program participant and the results.

(10) Staff shall document compliance with program policies and procedures in connection with each search, urinalysis testing, or breathalyzer testing.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XLI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CONTRABAND AND POTENTIAL WEAPONS (1) A program must define prohibited contraband in a written policy.

(2) Law enforcement must be notified as appropriate when illegal contraband is discovered.

(3) All contraband that is not illegal must be returned to the program participant's parent/legal guardian or destroyed in accordance with the program's contraband policy. When contraband is disposed of, at least two staff members

must be present, and the disposal must be documented in the program participant's case record.

(4) If contraband that is not illegal is stored by the program, the program must have written policies clearly outlining the storing procedure.

(5) A program must have written policy and procedure on management of weapons and potential weapons.

(6) Firearms must not be allowed on the program's property.

(7) Firearms must not be in the presence of program participants with the exception of law enforcement at any time on or off the program's property.

(8) Staff shall supervise a program participant's possession and use of knives, hatchets, other edged tools, or any item which may pose a danger to self or others.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XLII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: MONEY AND ADOLESCENT TRAINING AND EMPLOYMENT

(1) Money earned or received as a gift or allowance must be part of the program participant's personal property and accounted for separately from the program funds.

(2) If the program is partly supported by institutional production on a commercial basis, the program must comply with state and federal child labor and minimum wage laws.

(3) For program participants aged 16 and older, a program may assist in:

(a) preparing the program participant for economic independence;

(b) referring the program participant to the appropriate independent living program if applicable; and

(c) obtaining skills necessary for employment as determined to be appropriate to meet the individual's needs. Such skills include:

(i) completing applications;

(ii) personal appearances for employment situations;

(iii) attitudes toward employment; and

(iv) interviewing for jobs.

(4) A program must distinguish between tasks which program participants are expected to perform as part of living together, jobs to earn spending money, and jobs performed for vocational training. Program participants may not be compelled to work for the program without prior approval of the parent/legal guardian.

(5) Program participants may be given age appropriate, non-vocational work assignments within the program participant's capabilities as a constructive experience. The work assignment must comply with all state and federal labor laws, and regulations.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XLIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: RECREATION (1) The program may have an on-grounds recreation program that is operated by the program staff. However, when available, the program must provide the program participant access to community recreation and cultural events when appropriate to the program participant's needs, interests, and abilities.

(2) Program participants must have the opportunity to participate in age appropriate recreational activities on a regular basis.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XLIV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: INFECTION CONTROL (1) A program must develop and implement an infection prevention and control program. At a minimum the program must develop, implement, and review, at least annually, written policy and procedures regarding infection prevention and control which must include procedures to identify high risk individuals and what methods are used to protect, contain, or minimize the risk to program participants and staff.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XLV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: RELIGION AND CULTURE (1) The program must have written policies and procedures on how the program participant's individual religious and cultural beliefs will be addressed.

(2) The program must provide program participants with a reasonable opportunity to practice their respective religions. Program participants must be permitted to have reasonable access to religious materials of their choice. If reasonable access is denied, the program must have documentation of the specific reasons for the denial.

(3) The program must document its efforts in providing opportunity and encouragement to each program participant to identify with their cultural heritage.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XLVI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: TRANSPORTATION (1) All staff transporting program participants must possess a valid Montana driver's license for the type of vehicle used in transporting the program participants.

- (2) Any person transporting program participants must comply with applicable traffic laws while transporting.
- (3) All vehicles used in transporting program participants must:
 - (a) have proper Montana registration;
 - (b) have insurance coverage;
 - (c) be maintained in a safe condition;
 - (d) be equipped with a red triangle reflector device for use in an emergency;
- and
 - (e) be equipped with a first aid kit.
- (4) The driver and all of the passengers must ride in a vehicle manufactured seat. Each person must use a seat belt.
- (5) Program participants must not ride in the bed of, or in the back of a truck.
- (6) Program participants utilizing off highway or all terrain recreational vehicles must wear a helmet and be instructed on safety procedures.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

ADDITIONAL REQUIREMENTS FOR PRIVATE OUTDOOR PROGRAMS

NEW RULE XLVII PRIVATE OUTDOOR PROGRAMS: DEFINITIONS

- (1) "Administrative office" means the office where business operations, public relations, and management procedures take place.
- (2) "Expedition" means an excursion undertaken for specific treatment purposes that takes the program participant away from the field office.
- (3) "Expedition camp" means a nonpermanent campsite. Program participants and staff may move from one expedition camp to another when on expedition.
- (4) "Field office" means the office where all coordination of expedition operations takes place.
- (5) "Global position system (GPS) receiver" means a receiver which receives signals from a network of satellites known as the global positioning system, or GPS, which identifies the receiver's location by:
 - (a) latitude;
 - (b) longitude; and
 - (c) altitude to within a few hundred feet.
- (6) "High adventure activity" means an outdoor activity provided to program participants for the purposes of behavior management or treatment and that requires specially trained staff and special safety precautions to reduce the possibility of an accident or injury.
- (7) "Leave no trace principles" means wilderness and land use ethics designed to minimize the impact of visitors on back country areas.
- (8) "Residential outdoor program" means a program at designated stationary sites including permanent buildings where the program participants reside.
- (9) "Solo experience" means separation of a program participant from the group as part of the outdoor therapeutic process, not including a time-out.

(10) "Water cache" means storing away water in hiding or for future use.

(11) "Wilderness first responder" means a licensed first responder with the medical training course for outdoor professionals as offered by the National Association for Search and Rescue.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 2, L. of 2019, Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019

NEW RULE XLVIII PRIVATE OUTDOOR PROGRAMS: APPLICATION OF OTHER RULES (1) In addition to requirements established in this subchapter a private outdoor program must meet the requirements for all private alternative adolescent residential programs established in subchapter [NEW RULES I through XLVI].

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 12, L. of 2019

NEW RULE XLIX PRIVATE OUTDOOR PROGRAMS: PHYSICAL EXAMINATION (1) All physical examinations must be completed by an appropriate licensed health care professional.

(2) A program participant must have a physical examination:

(a) within 30 days prior to admission into the program;

(b) at least annually after entering the program; and

(c) at any time when circumstances indicate that an updated examination would be appropriate.

(3) The result of the physical examination including restrictions must be recorded on a standard form provided by the program and signed by the licensed health care professional performing the examination. The form must clearly identify the type and extent of physical activity which the program participant will be participating in.

(a) The program must comply with all restrictions or limitations placed on the program participant by the examining practitioner.

(4) The original physical examination form must be maintained at the field office and a copy must be carried by staff in a waterproof container when the program participant is away from the field office.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE L PRIVATE OUTDOOR PROGRAMS: FIELD DIRECTOR REQUIREMENTS (1) Each program expedition must include a field director responsible for:

(a) the quality of the field activities;

(b) coordinating field operations;

- (c) supervising direct care staff;
- (d) managing the field office; and
- (e) ensuring compliance with applicable licensing rules.
- (2) The field director must have the following:
 - (a) a bachelor's degree in a relevant discipline or 12 months of outdoor program field experience; and
 - (b) a current wilderness first responder certification.
- (3) The administrator of the program may serve as the field director if qualified for both positions.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LI PRIVATE OUTDOOR PROGRAMS: ADDITIONAL STAFF TRAINING (1) In addition to training requirements in [NEW RULE XXX], staff orientation training must include:

- (a) supervision of program participants;
 - (b) procurement, preparation, and conservation of water, food, and shelter;
 - (c) instruction in safety procedures and safety equipment, use of fuel, fire, and life protection;
 - (d) instruction in emergency procedures, medical, weather signalization fire, runaway and lost program participant;
 - (e) sanitation procedures relating to food, water, and waste;
 - (f) knowledge of wilderness medicine, including health issues related to acclimation and exposure to the environmental elements;
 - (g) local environmental precautions including terrain, weather upsets, poisonous plants, wildlife, and proper response to adversarial situations;
 - (h) high adventure activities; and
 - (i) avoiding potential hazards of expedition areas.
- (2) All program staff must complete first aid training within six months of hire and prior to working without a staff member trained in wilderness first aid.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LII PRIVATE OUTDOOR PROGRAMS: RESIDENTIAL OUTDOOR PROGRAM PARTICIPANT-TO-STAFF RATIO (1) A residential outdoor program must maintain the following program participant to awake staff ratios:

- (a) from 7:00 a.m. to 11:00 p.m., eight program participants to one staff;
 - (b) from 11:00 p.m. to 7:00 p.m., or any other reasonable eight-hour period of time when program participants are generally sleeping, 12 program participants to one staff.
- (2) When participating in high adventure activities the program must meet expedition staffing requirements in [NEW RULE LIII].

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LIII PRIVATE OUTDOOR PROGRAMS: EXPEDITION AND HIGH ADVENTURE ACTIVITY PROGRAM PARTICIPANT-TO-STAFF RATIO

- (1) Each expedition group of program participants must have the following:
 - (a) two staff members for the first four program participants and one additional staff member for each four program participants;
 - (b) each group must have at least one staff member of the same gender as the genders represented in the program participant group; and
 - (c) each group must include one field director.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 10, L. of 2019

NEW RULE LIV PRIVATE OUTDOOR PROGRAMS: OUTDOOR BEHAVIORAL PROGRAM: HIGH ADVENTURE GENERAL REQUIREMENTS

- (1) High adventure activities may include the following:
 - (a) target sports;
 - (b) aquatics;
 - (c) adventure challenge courses;
 - (d) climbing and rappelling;
 - (e) spelunking;
 - (f) white water activities;
 - (g) use of horses or other animals for riding or packing;
 - (h) skiing; or
 - (i) other activities defined in program policy as a high adventure activity.
- (2) For the high adventure activities, the program must have written policies and procedures that include:
 - (a) minimum training, experience, and qualifications for leaders and staff which must be documented in personnel records;
 - (b) classification and limitations for each program participant participation;
 - (c) arrangement, maintenance, and inspection of the activity area;
 - (d) appropriate equipment and the inspection and maintenance of the equipment; and
 - (e) safety precautions to reduce the possibility of an accident or injury.
- (3) Program participants must not be forced to participate in any high adventure activity.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LV PRIVATE OUTDOOR PROGRAMS: EXPEDITION: FIELD OFFICE REQUIREMENTS (1) A program must have a field office in Montana. A field office may be a vehicle, a camp, a building, the residential program, or the administrative office.

(2) The field office must be staffed and monitored 24 hours a day when there are program participants on expeditions or have staff continually monitoring communications and available by satellite phone within 15 minutes of the field office.

(3) Field office staff must respond immediately to any emergency situation.

(4) The following items must be maintained at the field office:

(a) a current list of the names of staff and program participants in each group;

(b) a master map of all activity areas used by a program;

(c) each group's expeditionary route with its schedule and itinerary, copies of which must be sent to the department and local law enforcement when requested;

(d) current logs of all communications with each expedition group away from the field office;

(e) program participant's emergency information required in [NEW RULE XXI];

(f) physical examination completed as part of program admission process and any subsequent physical exams;

(g) medical treatment authorization;

(h) list of current medications taken by the program participant;

(i) identifying marks of the program participants such as scars, tattoos, and piercings;

(j) health insurance information;

(k) list of contact persons in case of emergencies; and

(l) a copy of the program participant's case plan.

(5) The program must comply with federal, state, and local laws and regulations and must maintain proof of compliance at the field office.

(6) An arrangement must be made with national or state forest service offices if such land is to be used by the field office.

(a) If the field office or the expedition camp is located on or uses national or state lands, the administrator must familiarize the staff and program participants with rules and ethics governing the use of such property.

(7) If private property will be used, arrangements must be made with the property owners.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LVI PRIVATE OUTDOOR PROGRAMS: OUTDOOR PROGRAM EXPEDITION STAFF (1) During any expedition:

(a) expedition staff must carry a copy of the itinerary placed on file at the field office;

- (b) expedition staff must remain in contact with the field office via satellite phone, with contacts occurring at a minimum of once each morning and once each evening;
 - (c) expedition staff must possess a global positioning satellite receiver;
 - (d) supplies for providing emergency care must be at each expedition camp;
 - (e) expedition staff must maintain the daily expedition log. Entries in the log must be made in permanent ink and signed and dated by the staff member making the entry. The daily expedition log must be filed at the field office upon return from the expedition and maintained as part of the program's permanent record;
 - (f) expedition staff and program participants must implement and follow program policies and procedures regarding back country etiquette and leave no trace principles;
 - (g) expedition staff must closely monitor program participants while acclimating to the environment including temperature, climate, and altitude; and
 - (h) when temperatures exceed 95°F or fall below 10°F, expedition staff must take appropriate preventative measures to ensure program participants remain free of heat or cold related illness or injuries.
- (2) Expedition staff must maintain a daily log that includes:
 - (a) daily entries regarding health programs, accidents, injuries, near misses, medications used, behavioral problems, and unusual occurrences;
 - (b) daily notations of environmental factors such as weather, temperature, altitude, and terrain;
 - (c) daily entries assessing each program participant's hydration, skin condition extremities, and general physical condition;
 - (d) daily entries describing morning and evening contacts between expedition staff and field office staff;
 - (e) weekly entries assessing each program participant's physical condition by the field director or other trained as a wilderness first responder;
 - (f) emergency plan drills, showing date, time, staff, and program participants present; and
 - (g) descriptions of pre-site investigations for solo expeditions if applicable.
 - (3) Entries in the log must be made in permanent ink and signed and dated by the staff member making the entry.
 - (4) The daily expedition log must be filed at the field office upon return from the expedition and maintained as part of the program's permanent record.
 - (5) Upon return from any expedition the field director must debrief each program participant and staff member and document the debriefing in writing.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LVII PRIVATE OUTDOOR PROGRAMS: COMMUNICATIONS

- (1) The program must have written policies and procedures establishing a system of communication that meets the following criteria:
 - (a) each group away from the field office must have a satellite phone and extra charged battery packs for the satellite phone;

- (b) a global positioning system; and
 - (c) the program must develop a signal mirror communication system.
- (2) Verbal communication between each group and the field office must occur once each morning and once each evening.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LVIII PRIVATE OUTDOOR PROGRAMS: EXPEDITION: NUTRITIONAL REQUIREMENTS (1) A program must have and follow written policies and procedures on nutritional requirements.

(2) Each program must have a written menu that is approved by a qualified dietitian or nutritionist with knowledge of the program activities and levels.

(3) Foods must be served in amounts and a variety sufficient to meet the nutritional needs of each resident.

(4) Hands must be cleaned after each latrine use and prior to food preparation and food consumption.

(5) Food may not be withheld from a program participant for any reason.

(6) If no fire is available for cooking food, other food of equal caloric value which does not require cooking must be available.

(7) Field staff are responsible monitoring each program participant's food intake to ensure that the program participants have adequate nutrition.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LIX PRIVATE OUTDOOR PROGRAMS: EXPEDITION: WATER REQUIREMENTS (1) A program must have written policies and procedures on expedition water requirements to include:

(a) program participants must have access to potable water at all times;

(b) water must be available at each expedition camp site. Water cache location information must be verified by field staff before the group leaves expedition camp each day;

(c) expedition groups may not depend on aerial drops for water supply. Aerial water drops must be used for emergency situations only; and

(d) water taken by staff or program participants from a natural source and used for drinking or cooking must be treated to eliminate health hazards.

(2) Each group must have a supply of electrolyte replacement, the quantities to be determined by group size and environmental conditions.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

- NEW RULE LX PRIVATE OUTDOOR PROGRAMS: EXPEDITION:
PARTICIPANT CLOTHING, EQUIPMENT, AND SUPPLIES (1) Each expedition participant must have appropriate clothing, equipment, and supplies for the types of activities and for the weather conditions likely to be encountered.
- (2) Clothing, equipment, and supplies must include:
 - (a) sunscreen, which must be worn during all seasons;
 - (b) insect repellent, if appropriate, for the environmental conditions generally expected for the area and season;
 - (c) a commercial backpack or the materials to construct a safe backpack or bedroll;
 - (d) personal hygiene items necessary for cleansing;
 - (e) appropriate feminine hygiene supplies;
 - (f) wool blankets or an appropriate sleeping bag and a tarp or poncho for when the average nighttime temperature is expected to be 40°F or higher;
 - (g) shelter from precipitation, appropriate sleeping bag and ground pad when the average nighttime temperature is expected to be 39°F or lower;
 - (h) clothing appropriate for the temperature changes generally expected for the area;
 - (i) a clean change of clothing at least once a week or an opportunity for the participant to wash their clothing at least once a week; and
 - (j) a handbook for staff and program participants describing expedition requirements and expectations.
 - (3) A program may not remove, deny, or make unavailable, for any reason, the appropriate clothing, equipment, or supplies.
 - (4) There must be a first aid kit with sufficient supplies on all expeditions and high adventure activities. A kit must:
 - (a) be readily available on site as well as in all vehicles;
 - (b) meet the standards of an appropriate national organization for the activity being conducted and the location and environment being used;
 - (c) be reviewed by the field director with new staff for contents and use; and
 - (d) be inventoried by the field director after each expedition and restocked as needed.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

- NEW RULE LXI PRIVATE OUTDOOR PROGRAMS: OUTDOOR
PROGRAM SOLO EXPERIENCE (1) If an outdoor program uses a solo experience as part of the therapeutic or educational process during expeditions, the program must have written policy and procedures for the utilization of the solo experience. Policy and procedures must include:
- (a) purpose of solo experience;
 - (b) a solo experience must never be used as a punishment or negative consequence;
 - (c) supervision of program participant;

- (d) assessment of program participant readiness for the experience; assessment must be documented in the daily expedition log book;
 - (e) documented instructions on the solo experience, including expectations, restrictions, communication, environment, and emergency procedures;
 - (f) notification and check-in systems including a procedure for checking the program participant's emotional and physical condition daily;
 - (g) risk management procedures; and
 - (h) a staff member be designated to coordinate and implement the plan.
- (2) Staff must be familiar with the site chosen to conduct solo experiences and must conduct a pre-site investigation and preparation. These activities must be documented in the daily expedition log including:
- (a) a description of the terrain selected and the appropriateness for the level of participation skill of the program participants;
 - (b) a review of hazardous conditions; and
 - (c) a description of arrangements made prior to the solo experience for medication, food and water drop-offs, if needed.
- (3) Program participants must be supervised during a solo experience. Written plans for supervision must be drafted prior to the solo experience, and a copy of these written plans must be placed in the daily expedition log. A plan of supervision must include at a minimum:
- (a) the assignment of a specific staff member responsible for the supervision of the solo participant;
 - (b) predetermined procedures for placing program participants at a distance from the assigned staff to allow for appropriate supervision and emergency communication;
 - (c) a method of clearing defining physical boundaries;
 - (d) instruction of program participants to not participate in potentially dangerous activities;
 - (e) notification and check-in systems including a procedure for checking the program participant's emotional and physical condition daily; and
 - (f) emergency planning, including:
 - (i) instructing the program participants on safety and emergency procedures, including evacuation routes;
 - (ii) providing each program participant with signaling capabilities, including a whistle, for emergency notification;
 - (iii) instructing of other program participants on how to respond if the emergency notification system is put into use; and
 - (iv) providing a check-in system should an emergency occur.
- (4) The program participants must be debriefed immediately after a solo expedition. The debriefing must at a minimum:
- (a) include a written summary of the program participant's participation and progress achieved; and
 - (b) be provided in written form to the placing agency and, upon request, to the program participant's parent/legal guardian.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

4. STATEMENT OF REASONABLE NECESSITY

The 2019 Montana Legislature enacted Senate Bill 267 (SB 267), an act to terminate the Board of Private Alternative Adolescent Residential or Outdoor Programs and transfer the licensing duties of the board to the Department of Public Health and Human Services (department). SB 267 provides the department licensure and rulemaking authority. The bill was signed by the Governor on May 3, 2019, and became effective on July 1, 2019.

The department proposes to adopt New Rules I through LXI establishing new minimum standards for private alternative adolescent residential or outdoor programs. The proposed new rules are necessary to establish licensing and regulation to ensure the health and safety of program participants in accordance with SB 267.

The department is proposing to adopt the following new rules in order to authorize the state licensure of private alternative adolescent residential and outdoor programs.

NEW RULE I

It is necessary to implement this rule to identify the programs required to comply with the licensing requirements in this chapter.

NEW RULE II

It is necessary to adopt this new rule to define terminology used throughout the rule that is not defined in statute.

NEW RULE III

The department proposes to adopt this new rule to inform programs of all applicable administrative rules that apply to licensure of private alternative adolescent residential and outdoor programs.

NEW RULE IV

The department has determined that there is reasonable necessity to set the licensure fees at a level commensurate with program costs, as required in SB 267. The department maintained the current licensure fee that was established under the Board of Private Alternative Adolescent Residential and Outdoor Programs.

NEW RULE V

The department proposes to adopt this new rule to specify application and licensing survey procedures for private alternative adolescent residential and outdoor programs. This rule is necessary to inform applicants and licensed providers what requirements must be satisfied prior to the department issuing a license and the length of time a license will be issued.

NEW RULE VI

The department proposes to adopt this new rule to specify what may require the department to initiate negative licensure action. It is necessary to inform the applicant or licensee of their right to a fair hearing and the Administrative Rules of Montana describe that process.

NEW RULE VII

The department proposes to adopt this rule to specify the requirements for private alternative adolescent residential or outdoor programs regarding written policy and procedures. An effective policy and procedure manual is essential for programs to maintain consistency in delivery of service. It is a tool to ensure new and existing employees understand the program's expectations and requirements and provide guidance to all staff in the program's specific methods and standards for how services are provided, and work is performed.

NEW RULE VIII

This proposed new rule is necessary to require programs to develop an admission policy that clearly defines the type of program participant who would be appropriately served in their program. Program participants being placed in care have a wide variety of needs and behaviors, and one program may not be able to appropriately serve the adolescent. An inappropriate placement can be harmful or disruptive to the program participant, other program participants in the program, and program staff.

This new rule is necessary to ensure that program participants are adequately informed upon admission of the provider's specific program policies and expectations. It is particularly important to inform the program participant of the fire and safety issues, evacuation plans, discipline policy, and behavioral modification programs under which the program operates. Program participants must be made aware of the daily operations and treatment requirements necessary in order to maximize the benefit of their placement.

This new rule is necessary to maintain a list of current program participants to ensure that all participants are accounted for and that staffing requirements are met in all circumstances.

NEW RULE IX

The department proposes to adopt this new rule to specify discharge requirements to ensure program participants are safely discharged and the program participant's parent/legal guardian receive the necessary information required to arrange for follow-up services needed.

NEW RULE X

This proposed new rule is necessary to ensure all parties acknowledge and agree with the terms of the placement, the responsibilities of the program, and the responsibilities of the parent/legal guardian.

NEW RULE XI

This proposed new rule is necessary to ensure that the program participants' needs are being addressed by implementing measurable goals and objectives. Because each program participant has his or her own needs that the facility must address, individual case plans should be created to meet this goal. Timelines are included to ensure that the program participants' needs are being continually monitored and updated as necessary.

NEW RULE XII

The department proposes to adopt this new rule as it is necessary to ensure program staff and program participants are aware of the rights afforded to all program participants. This rule provides direction to staff and program participants for addressing such rights and grievances.

NEW RULE XIII

The department proposes to adopt this new rule as it is necessary to implement the background check requirements of SB 267. It is necessary to implement reasonable guidelines for disqualifying applicants from employment due to certain convictions to safeguard program participants from potential harm.

NEW RULE XIV

The department proposes to adopt this new rule to help ensure the safety of program participants served from abuse or neglect. This rule gives clear guidance and describes what is required for staff training and procedures to follow incidents of suspected abuse and neglect, and ensure that mandatory reporting requirements are followed.

NEW RULE XV

It is necessary to adopt the proposed new rule to ensure a safe living environment for all program participants and provide an environment that enhances the program participants' well-being.

NEW RULE XVI

The department proposes to adopt this new rule to ensure bedding and laundry are clean and maintained at all times and reduce the risk of spreading infection and communicable disease.

NEW RULE XVII

The department proposes to adopt this new rule to ensure adequate and potable water will be available at all times, reducing the risk of dehydration, illnesses, and diseases spread through contaminated water sources.

NEW RULE XVIII

The department proposes to adopt this new rule to ensure adequate and safe wastewater systems are maintained at all times reducing the risk of spreading infectious and communicable diseases.

NEW RULE XIX

The department proposes to adopt this new rule to increase safety by reducing the risk of fire hazards through preparation, program implementation, and education.

NEW RULE XX

The department proposes to adopt this new rule to ensure all staff and program participants are prepared for any emergency or disaster. This proposed new rule will assist in decreasing the risk of harm and injury to program participants while in placement.

NEW RULE XXI

The department proposes to adopt this new rule to increase safety to program participants by reducing the risk of harm through preparation, program implementation, and education. Having documented policies and procedures ensures that precautionary steps have been taken to avoid accidents or injuries.

NEW RULE XXII

The department proposes to adopt this new rule to specify information required in the program participants' case record to document services provided. Accurate records are essential for the continuity of care to clients. Adequate documentation allows all program staff to be informed of essential information needed to provide quality services to program participants.

NEW RULE XXIII

This proposed new rule is necessary to ensure all information provided to the program remains confidential and is released to only those that are allowed to have the information according to state and federal laws.

NEW RULE XXIV

This proposed new rule is necessary to ensure the department has been advised of changes made within the programs, disasters, serious incidents, and/or fires that may have occurred at the program. This proposed new rule will assist the department in determining the safety of the program participants.

NEW RULE XXV

This proposed new rule is necessary to ensure the safety and well-being of the staff and program participants. The requirements are standard conditions of employment that are used in any workplace serving children or adolescents. These conditions are commonly used to define job duties and what qualifications are necessary to successfully perform those duties. It is necessary for the program to maintain personnel records. The records provide documentation showing compliance with these rules, thereby ensuring the safety and well-being of the program participant. The department proposes a minimum age requirement for staff to be 21 years of age. Programs can serve adolescents up to the age of 19. The department believes it is not appropriate for staff to be younger or equivalent in age than the program participants they are in charge of caring for. Without an age gap between staff and program participants the likelihood of issues with boundaries and behavioral problems increases. Requiring a high school diploma or GED for staff is necessary because the job responsibilities require the basic knowledge obtained through a high school education.

NEW RULE XXVI

The department proposes to adopt this new rule to ensure personnel records maintain documentation of compliance with this rule, thereby ensuring the safety and well-being of the program participants.

NEW RULE XXVII

The department proposes to adopt this new rule to ensure programs conduct an internal audit regarding the quality of treatment, care, and services provided to program participants. The internal audit is necessary to provide management recommendations for continuous improvement in conforming to standards efficiency in service delivery, and program participant satisfaction.

NEW RULE XXVIII

The department proposes to adopt this new rule to ensure the program has a qualified administrator and the program has the appropriate oversight to provide the necessary care and treatment to the program participants.

NEW RULE XXIX

The proposed new rule is necessary to ensure the safety and well-being of program participants at all times. The nighttime safety protocol will increase safety for all program participants and staff by allowing the program to determine what measures are needed depending on the population the program serves and the level of night supervision. The requirement for professional staff is determined by the program as outlined in the program description.

NEW RULE XXX

The department proposes to adopt this new rule in order to provide the necessary training requirements for staff to ensure that they are prepared to address the everchanging needs of the program and the program participants being served. Staff must be prepared to deal with a wide variety of possible scenarios such as how to deal with crisis and emergency situations. Due to the difficult nature of the program participants being served, providers need to implement effective de-escalation methods and ensure staff is trained in these procedures. The proposed new rule provides training timelines and expectations. Without these timelines, it is possible that staff may not be trained in a timely manner when situations arise. Requirements for continued training give staff the opportunity to keep current with changes in care management and improve their knowledge and skills to deal with difficult program participants. When staff are not adequately trained to provide appropriate care, it reduces the effectiveness of the program and increases the risk of harm to program participants.

NEW RULE XXXI

The department proposes to adopt this new rule to ensure program participants' medical, dental, and psychological needs are being identified and addressed in a timely manner.

NEW RULE XXXII

The department proposes to adopt this new rule to clearly outline procedures for the safe administration, storage, and documentation of medication. The proposed new rules are necessary to provide for the safety of program participants by ensuring that the program participants are given the proper medication, in the appropriate dosage, at the appropriate time. It further prohibits the use of medication as a means of discipline.

NEW RULE XXXIII

The proposed new rule is necessary to increase the safety of program participants by ensuring appropriate care, supervision, safety, treatment, and guidance to program participants. The proposed rule is necessary to ensure program participants have adequate contact with family members in order to foster and improve relationships.

NEW RULE XXXIV

The proposed new rule is necessary to ensure the nutritional needs of each program participant is being identified and met.

NEW RULE XXXV

The proposed new rule is necessary to ensure programs meet the minimum requirements needed for safe food handling, preparation and sanitation, and prevent contamination and communicable diseases.

NEW RULE XXXVI

The department proposes to adopt this new rule to ensure that the program participants are provided with suitable clothing and hygiene supplies for their age, size, and peer groups in surrounding communities.

NEW RULE XXXVII

The department proposes to adopt this new rule in order to protect the health and safety of the program participants being served by developing appropriate behavioral management policies. It is necessary to require programs to clearly define policies, so the program participant understands what is expected of them and know the consequences of their behaviors in order to gain the most benefit from the program.

NEW RULE XXXVIII

The department proposes to adopt this new rule to approve appropriate time-out procedures implemented by program policy. This proposed new rule is necessary as it describes the appropriate use of time-out. It is necessary to specifically identify time-out as an individual behavior management policy because of the widespread use and various ways it is implemented.

NEW RULE XXXIX

The department proposes to adopt this new rule as it provides clear guidelines in the application of crisis intervention and physical restraints. The rule incorporates standard practices and federal guidelines pertaining to physical restraints, including when the use of physical restraint is acceptable and when it is prohibited. Since the use of physical restraints is a serious behavioral management technique and is to be

used only in emergency situations, it is necessary to have strict guidelines in order to protect the program participant, other program participants, and the staff.

NEW RULE XL

The department proposes to adopt this new rule to protect program participant's right to be free from unnecessary searches of their person, personal property, and correspondence.

NEW RULE XLI

The department proposes to adopt this new rule to safeguard program participants from dangerous weapons and provide guidelines for the storage and destruction of harmful items as defined by program policy. Prohibiting the possession and use of firearms on the property dramatically decreases the risk of harm to program participants.

NEW RULE XLII

The department proposes to adopt this new rule to ensure separation of the program participant's personal money and program funds and ensure compliance with state and federal child labor laws. It is necessary to implement requirements of this rule to assist program participants in developing the necessary skills needed to achieve economic independence.

NEW RULE XLIII

The department proposes to adopt this new rule to improve program participants' health and social skills by requiring program participants have access to recreational and cultural events when appropriate.

NEW RULE XLIV

The department proposes to adopt this new rule to prevent the spread of diseases to staff and program participants.

NEW RULE XLV

The department proposes to adopt this new rule to ensure program participants are granted individual freedom to participate in religious activities and cultural events of their choosing when appropriate.

NEW RULE XLVI

The department proposes to adopt this new rule to increase safety of program participants and staff when operating or riding in a motorized vehicle.

NEW RULE XLVII

It is necessary to adopt this new rule to define terminology used for private outdoor programs that is not defined in statute or private alternative adolescent residential program administrative rules.

NEW RULE XLVIII

The department proposes to adopt this new rule to inform programs of all applicable administrative rules that apply to licensure of private outdoor programs.

NEW RULE XLIX

The department proposes to adopt this new rule to ensure the program participant is healthy enough to participate in an outdoor program that, by its nature, demands a higher level of physical fitness to participate.

NEW RULE L

The department proposes to adopt this new rule to ensure all groups going on an expedition are led by a qualified field director that has specific training and experience in wilderness activities and emergency safety.

NEW RULE LI

The department proposes to adopt this new rule to require additional training for outdoor staff specific to providing a safe program in the wilderness. Staff must be prepared to be in difficult terrain, weather, and keep program participants safe in an outdoor environment.

NEW RULE LII

The department proposes to adopt this new rule to ensure the safety and well-being of program participants at all times. Due to the inherent risk factors of high adventure activities in outdoor programs, a higher level of supervision is required. The nighttime safety protocol will increase safety for all program participants and staff by allowing the program to determine what measures are needed depending on the population the program serves and the level of night supervision.

NEW RULE LIII

The proposed new rule is necessary to ensure the safety and well-being of program participants at all times. Due to the inherent risk factors of expeditions, a higher level of supervision is required.

NEW RULE LIV

The department proposes to adopt this new rule to ensure the safety of program participants when participating in a high adventure activity. The rule allows for the programs to develop policy and procedures appropriate for specific high adventure activities the programs utilize.

NEW RULE LV

The department proposes to adopt this new rule to increase the safety of program participants and staff when on expedition.

NEW RULE LVI

The department proposes to adopt this new rule to increase the safety of program participants and staff when on expedition.

NEW RULE LVII

The department proposes to adopt this new rule to increase the safety of program participants and staff when on expedition.

NEW RULE LVIII

The department proposes to adopt this new rule to ensure program participants have access to an adequate amount of food during an expedition to meet their nutritional needs.

NEW RULE LIX

The department proposes to adopt this new rule to ensure program participants have access to an adequate and safe water supply during an expedition.

NEW RULE LX

The department proposes to adopt this new rule to ensure program participants are prepared for conditions in the outdoors and have access to the appropriate clothing, equipment, and supplies to safely participate in an expedition.

NEW RULE LXI

The department proposes to adopt this new rule to provide for the safety and well-being of program participants engaging in a solo experience. The inherent risk associated with a solo experience places the youth in increased danger which requires additional safety precautions and supervision requirements in the proposed rule.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 20, 2019.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email and letter on August 13, 2019.

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

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

/s/ Erica Johnston, for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State August 13, 2019.

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

In the matter of the adoption of	)	NOTICE OF PROPOSAL OF
Temporary Rules I through III, and	)	ADOPTION OF TEMPORARY
the temporary amendment of ARM	)	RULES AND AMENDMENT
37.107.111, 37.107.115, and)	
37.107.127 pertaining to the medical)	
marijuana program)	

TO: All Concerned Persons

1. The Department of Public Health and Human Services (department) is proposing to adopt and amend the above-stated temporary rules in order to implement certain "effective upon passage and approval" portions of 2019 Senate Bill 265 (SB 265). These portions of SB 265 became effective when the bill was signed into law on May 3, 2019.

Pursuant to the Montana Medical Marijuana Act and as amended by SB 265, the department licenses and regulates individuals and entities that provide medical marijuana to registered cardholders. Among other items, SB 265 clarified that rejection, denial, suspension, revocation, or other modification of registry identification cards, licenses, or endorsements constitutes an adverse action that must be reviewed as a contested case under the provisions of the Montana Administrative Procedure Act (MAPA), Mont. Code Ann. §§ 2-4-601, et seq.

MAPA also provides that a statute with an effective date prior to October 1 of the year of enactment or amendment "may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable..." 2-4-303(2), MCA. Temporary rules are effective until October 1 of the year of adoption. The department now enacts these temporary rules in order to comply with the requirements of SB 265 and intends to file a more comprehensive proposal notice implementing the legislation prior to the expiration of these temporary rules.

2. New Rule I makes applicable to the Montana Medical Marijuana Program specified existing administrative rules setting out contested case hearing procedures for programs administered by the department. New Rule II sets out additional procedures for the suspension or revocation of provider licenses. An important feature of New Rule II is that no new cardholders may designate a licensee presently involved in a contested case proceeding as their provider during the pendency of that proceeding. This protects unwitting cardholders by limiting their exposure to potentially untested or diverted marijuana product and minimizes disruption should their provider no longer be licensed at the culmination of the proceeding. New Rule III specifies administrative rules for contested case hearings with regard to medical marijuana card revocations.

3. The temporary rules are effective September 22, 2019.
4. The text of the proposed new temporary rules provides as follows:

NEW RULE I ADVERSE BUREAU ACTIONS CONCERNING REGISTRY PROVIDER LICENSES AND ENDORSEMENTS: APPLICABLE HEARING PROCEDURES

(1) Hearings to contest denial, modification, suspension, or revocation of an application for or existing registry identification card, provider license, or endorsement shall be conducted pursuant to the following administrative procedures: ARM 37.5.101, 37.5.117, 37.5.131, 37.5.301, 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: 50-46-329, 50-46-344, MCA

IMP: 50-46-308, 50-46-312, 50-46-320, 50-46-329, 50-46-330, 50-46-331, MCA

NEW RULE II ADDITIONAL PROCEDURES FOR LICENSE AND ENDORSEMENT SUSPENSION OR REVOCATION

(1) Except as provided in (2), providers may continue to serve existing cardholders at existing registered premises during the pendency of a contested case hearing, until a final agency decision is rendered. No new cardholders may designate a licensee in a contested case proceeding as their provider. No new registered premises may be licensed to a provider in a contested case proceeding.

(2) Upon a written finding by the bureau that public health, safety, or welfare imperatively requires emergency action, the bureau may summarily suspend a license and all operations of a provider pending the completion of a revocation proceeding. Emergency action may be taken when the public health, safety, or welfare is imperiled:

(a) by unsafe, contaminated, or adulterated marijuana or marijuana infused product;

(b) when credible evidence exists of deliberate provider diversion of marijuana or marijuana infused product to individuals or parties not authorized under statute or rule to possess the marijuana or marijuana infused product; or

(c) any other violation of this chapter that places an employee or members of the public at imminent risk of injury or harm.

AUTH: 50-46-329, 50-46-344, MCA

IMP: 50-46-308, 50-46-312, 50-46-320, 50-46-329, 50-46-330, 50-46-331, MCA

NEW RULE III ADVERSE BUREAU ACTIONS CONCERNING CARDHOLDERS: APPLICABLE HEARING PROCEDURES

(1) Hearings to contest card application denials or revocations by the bureau shall be conducted pursuant to the following administrative procedures: ARM 37.5.101, 37.5.117, 37.5.131, 37.5.301, 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: 50-46-344, MCA

IMP: 50-46-320, 50-46-330, 50-46-331, MCA

5. The rationale for the temporary rules is set forth in paragraph 1.

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

37.107.111 REGISTERED CARDHOLDER APPLICATION PROCESS

(1) through (7) remain the same.

~~(8) Any denial under this part is subject to judicial review.~~

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

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-307, 50-46-310, 50-46-344, MCA

37.107.115 LICENSE AND ENDORSEMENT APPLICATION PROCESS

(1) through (3) remain the same.

(4) Applicants include, but are not limited to:

(a) any individual or legal entity who holds or controls an financial interest, ownership, or partnership in the business or entity;

(b) through (16) remain the same.

~~(17) Any denial under this part is subject to judicial review.~~

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-309, 50-46-344, MCA

37.107.127 DENIAL OF REGISTRY IDENTIFICATION CARD APPLICATION OR REVOCATION OF REGISTRY IDENTIFICATION CARD

(1) The department, after written notice to the applicant or registered cardholder, may deny or revoke an application or registry identification card if:

(a) through (h) remain the same.

(i) the department is notified in writing by a ~~landlord~~ property owner revoking permission under 50-46-307, MCA;

(j) through (l) remain the same.

~~(2) Any denial or revocation under this part is subject to judicial review.~~

AUTH: 50-46-344, MCA

IMP: Section 35, Ch. 419, L. 2011, 45-9-203, 50-46-303, 50-46-308, 50-46-320, 50-46-344, 61-11-101, MCA

7. STATEMENT OF REASONABLE NECESSITY

The temporary amendments to ARM 37.107.111 and 37.107.127 are necessary to remove conflicts with the provisions of Senate Bill 265 (SB 265), which applied the Montana Administrative Procedure Act (MAPA) contested case hearing process, *inter alia*, to denials of applications of registry identification cards. The replacement of the term "landlord" with "property owner" in ARM 37.107.127 is necessary to

reflect a change made in SB 265 to clarify legislative intent and situations where the property owner and landlord are not the same person or entity.

The temporary amendment to ARM 37.107.115 is necessary to implement a provision of SB 265 that applied the MAPA contested case hearing process to denials of applications for Montana Marijuana Program licenses and endorsements.

8. A standard rulemaking procedure will be undertaken prior to the expiration of these temporary rules on October 1, 2019.

9. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Gwen Knight at the Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

10. 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 9 above or may be made by completing a request form at any rules hearing held by the department.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail on August 13, 2019.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Rule Reviewer

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

Certified to the Secretary of State August 13, 2019.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
2.13.301, 2.13.304, 2.13.305, 2.13.310,)
and 2.13.313, pertaining to public safety)
answering point (PSAP) certification and)
funding)

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. On July 5, 2019, the department published an amended notice of amendment on page 903 of the 2019 Montana Administrative Register, Issue Number 13.

2. No comments were received.

3. The department has amended ARM 2.13.301, 2.13.304, 2.13.305, 2.13.310, and 2.13.313 exactly as proposed.

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

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 13, 2019.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rules I and II, and the amendment of) AMENDMENT
ARM 4.19.101 pertaining to hemp)
processing and associated fees)

TO: All Concerned Persons

1. On June 7, 2019, the Department of Agriculture published MAR Notice No. 4-19-258 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 698 of the 2019 Montana Administrative Register, Issue Number 11.

2. The department has adopted New Rule I (4.19.201) as proposed.

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

NEW RULE II (4.19.202) HEMP PROCESSING FOR A COMMODITY DEALER (1) A person or entity with a Hemp Processing License for calendar year 2019 to 2020 may contract with licensed Montana hemp producers without a Commodity Dealer License under the following conditions:

- (a) the hemp producer acknowledges the hemp processor is not a licensed commodity dealer in Montana, meaning the processor does not have a commodity dealer bond, by signing a written statement;
 - (b) the total amount of contracted hemp does not exceed \$10 million; ~~and~~ or
 - (c) they are purchasing or processing hemp stalks for fiber.
- (2) remains as proposed.

4. The department has amended ARM 4.19.101 as proposed.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State August 13, 2019.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM)
8.100.101 through 8.100.112)
pertaining to the Montana Board of)
Research and Commercialization)
Technology

NOTICE OF REPEAL

TO: All Concerned Persons

1. On July 5, 2019, the Department of Commerce published MAR Notice No. 8-100-169 pertaining to the proposed repeal of the above-stated rules at page 915 of the 2019 Montana Administrative Register, Issue Number 13.
2. The department has repealed the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Garrett Norcott
Garrett Norcott
Rule Reviewer

/s/ Tara Rice
Tara Rice
Director
Department of Commerce

Certified to the Secretary of State on August 13, 2019.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On February 8, 2019, the Superintendent of Public Instruction published MAR Notice No. 10-16-132 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 165 of the 2019 Montana Administrative Register, Issue Number 3. Following the hearing, the Superintendent determined that the time for comments should be extended and on June 21, 2019 published a Notice of Extension of Comment Period on Proposed Amendment at page 790 of the 2019 Montana Administrative Register, Issue Number 12.

2. The Superintendent has amended ARM 10.16.3010, 10.16.3022, and 10.16.3806 as proposed in the original proposal.

3. The Superintendent has amended ARM 10.16.3011 as proposed in the Notice of Extension of Comment Period on Proposed Amendment.

4. The Superintendent has thoroughly considered the comments and testimony received. A summary of the comments received prior to and at the hearing, and the Superintendent's responses are as follows:

ARM 10.16.3010

COMMENT NO. 1: The OPI received two comments in support of the change in criteria for identifying a student with a developmental delay.

Response: The OPI thanks the commenters for their comments.

ARM 10.16.3011

COMMENT NO. 2: Several commenters recommended that the OPI adopt the criteria for the diagnosis of autism that are published in the Diagnostic and Statistical Manual of Mental Disorders-5 (DSM-5).

Response: The DSM-5 criteria were developed for use by trained clinicians. The Cautionary Statement for Forensic Use of DSM-5 states: "Use of DSM-5 to assess for the presence of a mental disorder by nonclinical, nonmedical, or otherwise insufficiently trained individuals is not advised." (American Psychiatric Association, 2013). Additionally, the purpose of an educational evaluation of a student is to determine if a student meets the criteria for one of the thirteen disability categories

under the IDEA, and because of that disability needs specialized instruction. School evaluation teams are not diagnosing a child with a medical condition and it would be inappropriate for school teams to be using the DSM-5 diagnosis. Through an intensive review of criteria for autism used in other states, and the input of a large group of stakeholders, the proposed criteria were developed to be closely related to the DSM-5 criteria, without confusing the educational evaluation process with a medical evaluation and diagnosis.

COMMENT NO. 3: Several commenters stated the proposed criteria are too rigid.

Response: The current criteria in ARM 10.16.3011 and the DSM-5 use terms that are vague and easily misunderstood by evaluation team members in the process of determining if a child meets the criteria. The OPI believes the proposed criteria provide specific, observable examples of the above language, which will create greater agreement among evaluators and parents in identifying characteristics of autism. The OPI did consider the understandability of the language used in developing the revised proposed criteria.

COMMENT NO. 4: Several commenters stated that the Type 1 and Type 2 labels are confusing or unnecessary.

Response: The OPI agrees. Based on the input from the respondents, the OPI has removed the Type 1 and Type 2 determination from the proposed criteria.

COMMENT NO. 5: Commenters expressed concern regarding the number of characteristics required for qualification.

Response: The OPI appreciated the feedback regarding the number of characteristics required for a student to meet the criteria for identification with autism under the IDEA. The OPI recognizes that students who might qualify in the autism category present a broad spectrum of characteristics. The purpose of the proposed criteria is to ensure that students across the entire spectrum are appropriately identified and receive the special education and related services they need. Based on the responses received, the OPI has revised the proposed criteria to better reflect the spectrum of characteristics that might be identified. This is not a new approach to these criteria. Since July 1, 2000, the OPI criteria for autism have required that students exhibit a specified number of characteristics of autism.

COMMENT NO. 6: Several commenters stated that the OPI should adopt the IDEA definition and cannot have requirements beyond that definition.

Response: The IDEA was most recently reauthorized in 2004. Since that reauthorization, the OPI has adhered to the definition of autism that is contained in the law and regulations. For each of the defined disabilities the OPI specifies the criteria that must be met to meet the definition. These criteria are used by evaluation teams to clarify the characteristics of a specific disability. The criteria need to be updated periodically to reflect the current knowledge regarding a particular disability. In this case, the criteria for autism were last updated in 2000.

The revised OPI criteria incorporate the increased knowledge of autism since that time. The IDEA definition of autism contains potential exclusionary factors based on the co-occurrence of autism and emotional disturbance; and confusing language as to whether a child must manifest the characteristics of autism before age three. The proposed OPI criteria contain neither of those potential exclusionary factors.

COMMENT NO. 7: Several commenters expressed concern that the process of developing the proposed criteria did not include individuals who are qualified to make a diagnosis of autism.

Response: Sixteen school psychologists participated in the development of the rule, including representatives of the Montana Association of School Psychologists. All fifty-plus individuals who participated in the development of the proposed rule are those who would be part of an evaluation report team determining a student's eligibility for special education and related services. In developing the proposed criteria, the OPI reviewed the autism criteria for all 50 states, the IDEA autism criteria, and the DSM-5 criteria for Autism Spectrum Disorder. Based on that review, the Autism Criteria Revision Groups (consisting of parents and special education professionals) in six cities reviewed and commented on 164 characteristics of autism identified from the above sources. That information based on how other states, agencies and associations identify autism was used to create the proposed OPI criteria.

COMMENT NO. 8: Several commenters stated that the OPI is trying to reduce its costs or limit the number of students that qualify.

Response: The OPI proposed the change to the identification criteria to improve the ability of parents and school personnel to understand the criteria, and to reflect the many changes in the knowledge regarding autism since the rule was last revised in 2000. The OPI believes that all students with disabilities must be identified and provided a Free Appropriate Public Education (FAPE). In no way are the proposed rules intended to limit the identification of students with autism. The OPI believes that the revised proposed criteria will result in more accurate identification of students, and a better understanding by parents and school staff regarding the identified needs of the student.

COMMENT NO. 9: Several commenters stated that OPI should not use a checklist for the criteria.

Response: Since July 1, 2000, the OPI criteria for autism has had a "checklist" and has required that students exhibit a specified number of characteristics of autism in different areas to be identified as a student with Autism Spectrum Disorder. This is consistent with the criteria for all disabilities.

COMMENT NO. 10: Several commenters stated that the proposed criteria were not based on what other states are using.

Response: In developing the proposed criteria, the OPI reviewed the autism criteria for all 50 states, the IDEA criteria, and the DSM-5 criteria for Autism Spectrum Disorder. Based on that review, the Autism Criteria Revision Groups (consisting of parents and special education professionals) in six cities reviewed and commented on 164 characteristics of autism identified from the above sources. That information based on how other states, agencies, and associations identify autism was used to create the proposed OPI criteria.

COMMENT NO. 11: A comment was received that the OPI should not remove the language regarding the characteristics being evident before age three.

Response: The language in the previous OPI criteria for autism and the IDEA definition requiring documentation of the existence of a developmental disability before the student was three years of age but also saying that a student who manifests the characteristics of autism after age three could still be identified has been very confusing. That language allows a student to be identified regardless of the age at which autism characteristics or developmental delay became evident. Requiring that the characteristics of autism be evident prior to a certain age can exclude the identification of students whose characteristics are not evident until more complex social communication and social interactions are expected of them as they age.

COMMENT NO. 12: A comment was received that the criteria should require that teams use the Autism Diagnostic Observation Scale (ADOS) and reevaluate every three years.

Response: Not every public school district in Montana has or has access to a team which can conduct the ADOS. Creating and maintaining ADOS teams for Montana's 400+ school districts would be difficult and cost-prohibitive. Additionally, the variability of autism is such that requiring the use of a single assessment tool such as the ADOS may prevent students from being identified. The revised criteria and additional state and federal rules allow Evaluation Report teams to individualize which assessment tool/process will best provide information about the student. The IDEA regulations and state rules already require that the IEP team consider the need for a comprehensive reevaluation at least once every three years.

COMMENT NO. 13: A commenter expressed concerns that a student transferring to Montana from another state would not qualify.

Response: In developing the proposed criteria, the OPI reviewed the autism criteria for all 50 states, the IDEA criteria, and the DSM-5 criteria for Autism Spectrum Disorder. Based on that review, the Autism Criteria Revision Groups (consisting of parents and special education professionals) in six cities, reviewed and commented on 164 characteristics of autism identified from the above sources. That information based on how other states, agencies, and associations identify autism was used to create the proposed OPI criteria. This process will reduce the likelihood that a child

would not qualify after having been identified in another state. The IDEA regulations address the requirements for students who transfer between states.

COMMENT NO. 14: Several commenters stated that the criteria should require a medical diagnosis.

Response: The purpose of an educational evaluation of a student is to determine if a student meets the criteria for one of the thirteen disability categories under the IDEA, and because of that disability needs specialized instruction. School evaluation teams are not diagnosing a child with a medical condition and it would be inappropriate to require a medical diagnosis for this purpose. The evaluation team must determine if a medical evaluation is necessary, and if so, the school district must obtain that evaluation at no cost to the parents.

COMMENT NO. 15: One commenter stated that the statement of reasonable necessity contained no information on the cost of programs and the number of students served and how that would change.

Response: The information regarding the number of students identified with autism is available through the OPI GEMS data warehouse. Information regarding the costs of individual student special education programs is not available to the OPI.

5. The Superintendent has thoroughly considered the comments and testimony received following the Notice of Extension. A summary of the comments and the Superintendent's responses are as follows:

COMMENT NO. 16: Two commenters indicated they were in support of the proposed changes.

Response: The OPI appreciates the comments.

COMMENT NO. 17: Several commenters stated the term "significant difficulties" needs clarification.

Response: This is not a substantial change from the term, "significant delays" in the previous rule. The word significant means sufficiently great or noteworthy. The OPI believes the plain meaning of the word is a good basis for evaluation teams to make a determination of the impact of the difficulties of a particular child.

COMMENT NO. 18: One comment received stated that the criteria needs a requirement that the characteristics be manifested in multiple settings.

Response: The Individuals with Disabilities Education Act (IDEA) regulations and Montana rules require the use of a multi-disciplinary team, which examines information from multiple sources. This requirement is sufficient to ensure that the team is considering the multiple settings in which the child functions.

COMMENT NO. 19: Commenters stated that the criteria should include wording, which requires that criteria for emotional disturbance, cognitive delay, and hearing impairment also be considered.

Response: The IDEA regulations and Montana rules require the comprehensive evaluation to include all areas of suspected disability. No additional requirement is needed.

COMMENT NO. 20: A comment was received that stated the criteria should include wording which requires developmental history be taken into account.

Response: The school district is responsible for determining what assessment information is needed for each comprehensive evaluation. It would be inappropriate for the OPI to mandate any specific assessment procedure for any disability category.

COMMENT NO. 21: Commenters stated that the criteria should include wording which offers some means of identifying a level of severity given the very wide spectrum of language and behaviors students may exhibit.

Response: Based on the previous input from the commenters, the OPI has removed the Type 1 and Type 2 determination from the proposed criteria.

COMMENT NO. 22: One commenter stated that requiring a student to have deficits in all three identified areas will leave some students (i.e., those who have very significant impairments in one or two of the identified areas but not all three) without the special education services that they require to access a FAPE.

Response: This is not a new approach to these criteria. Since July 1, 2000, the OPI criteria for autism have required that students exhibit a specified number of characteristics of autism in the areas of verbal and nonverbal communication and restricted, repetitive, and stereotyped patterns of behavior, interests, and activities.

COMMENT NO. 23: Incorporate and/or conform to the ASD diagnostic criteria under DSM-5.

Response: The DSM-5 criteria were developed for use by trained clinicians. The Cautionary Statement for Forensic Use of DSM-5 states: "Use of DSM-5 to assess for the presence of a mental disorder by nonclinical, nonmedical, or otherwise insufficiently trained individuals is not advised." (American Psychiatric Association, 2013). Additionally, the purpose of an educational evaluation of a student is to determine if a student meets the criteria for one of the thirteen disability categories under the IDEA, and because of that disability needs specialized instruction. School evaluation teams are not diagnosing a child with a medical condition and it would be inappropriate for school teams to be using the DSM-5 diagnosis. Through an intensive review of criteria for autism used in other states, and the input of a large group of stakeholders, the proposed criteria were developed to be closely related to

the DSM-5 criteria, without confusing the educational evaluation process with a medical evaluation and diagnosis.

COMMENT NO. 24: A comment was received recommending that OPI remove the arbitrary characteristic count.

Response: The OPI appreciated the feedback regarding the number of characteristics required for a student to meet the criteria for identification with autism under the IDEA. The OPI recognizes that students who might qualify in the autism category present a broad spectrum of characteristics. The purpose of the proposed criteria is to ensure that students across the entire spectrum are appropriately identified and receive the special education and related services they need. Based on the responses received, the OPI has revised the proposed criteria to better reflect the spectrum of characteristics that might be identified. This is not a new approach to these criteria. Since July 1, 2000, the OPI criteria for autism have required that students exhibit a specified number of characteristics of autism.

COMMENT NO. 25: Two commenters suggested allowing the exercise of clinical judgment by an evaluator in deviating from the rigid characteristic count.

Response: The determination of the eligibility of a child for special education and related services in any particular category is made by a team of individuals, which includes the parents of the child. It would be inappropriate for the OPI to make a rule that allows one individual to make the determination of a child's eligibility based solely on their clinical judgement. As noted previously, the determination of eligibility for special education is not equivalent to diagnosing a child with an impairment under the DSM-5 criteria.

COMMENT NO. 26: One commenter recommended allowing evaluation teams to override the criteria where a qualified medical or mental health professional has rendered an ASD diagnosis.

Response: The purpose of an educational evaluation of a student is to determine if a student meets the criteria for one of the thirteen disability categories under the IDEA, and because of that disability needs specialized instruction. School evaluation teams are not diagnosing a child with a medical condition and it would be inappropriate to require a medical diagnosis for this purpose. Through an intensive review of criteria for autism used in other states, and the input of a large group of stakeholders, the proposed criteria were developed to be closely related to the DSM-5 criteria, without confusing the educational evaluation process with a medical evaluation and diagnosis. If a child has a medical diagnosis that is based on the criteria from the DSM-5, the evaluation team should be able to identify the characteristics in the proposed criteria without any difficulty.

COMMENT NO. 27: One commenter recommended changing the word "explaining" to "demonstrating."

Response: The OPI believes the current language is appropriate to assist evaluation teams in making a determination of a child's eligibility.

COMMENT NO. 28: One commenter recommended including the word "persistent" in several criteria statements.

Response: The OPI believes the current language is appropriate to assist evaluation teams in making a determination of a child's eligibility.

ARM 10.16.3022

COMMENT NO. 29: One commenter expressed concern that the proposed criteria for identifying a student with visual impairment were too broad.

Response: The OPI thanks the commenter for the comment, but this amendment is necessary based on guidance from the U.S. Department of Education. The Office of Special Education and Rehabilitative Services, U.S. Department of Education, in a May 22, 2017 Memorandum to State Directors of Special Education regarding Eligibility Determinations for Children Suspected of Having a Visual Impairment Including Blindness under the Individuals with Disabilities Education Act directed states to change criteria for visual impairment, so that the criteria are not more limiting than the definition provided at 34 CFR 300.8(13) and do not preclude evaluation report teams from considering whether other vision conditions, even with correction, adversely affect the child's educational performance such that the child requires special education and related services under the IDEA.

/s/ Julia W. Swingley
Julia W. Swingley
Rule Reviewer

/s/ Elsie Arntzen
Elsie Arntzen
Superintendent of Public Instruction

Certified to the Secretary of State August 13, 2019.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 12.11.501 pertaining to the list)
of water bodies with specific)
regulations found in administrative)
rule)

TO: All Concerned Persons

1. On July 5, 2019, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-521 pertaining to the proposed amendment of the above-stated rule at page 925 of the 2019 Montana Administrative Register, Issue Number 13.

2. The commission has amended ARM 12.11.501 as proposed.

3. No comments were received.

/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 August 13, 2019.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 18.15.411 and 18.15.419)
pertaining to Motor Fuels Tax)
Electronic Refunds)

TO: All Concerned Persons

1. On July 5, 2019, the Department of Transportation published MAR Notice No. 18-174 pertaining to the proposed amendment of the above-stated rules at page 927 of the 2019 Montana Administrative Register, Issue Number 13.

2. The department has amended ARM 18.15.411 and 18.15.419 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: Two comments were received stating ARM 18.15.411(1)(a) should allow more than 30 days for refund applicants to provide requested documentation. The comments stated many factors can cause delays in the immediate availability of such documents, or the applicant may be away on business or vacation. The comments also stated farmers and ranchers will need extra time to deal with paperwork because of seasonal demands on their time. The comments stated the 30-day rule may eliminate a lot of qualified refunds for farmers and ranchers. The comments requested the timeline be extended from 30 days to 60 or 90 days.

RESPONSE #1: MDT notes the 30-day timeframe shown in ARM 18.15.411(1)(a) is only for refund recipients who have already gathered their documents and filed their refund claim electronically without submitting the supporting documents to MDT. After refunds have been processed and paid, a random group of the recipients is asked to provide the documentation supporting the refund received. Only these refund support documents will need to be submitted within 30 days. The usual timeframe for initially submitting a refund will remain the same as "within 36 months (three years) after the date on which the tax was paid." The 36 months is determined by the postmark date or electronic submittal date.

/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 August 13, 2019.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.21.202, 24.21.302, and)
24.21.421 pertaining to registered)
apprenticeship)

TO: All Concerned Persons

1. On May 24, 2019, the Department of Labor and Industry (department) 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. On July 5, 2019, the department published an amended notice of public hearing and extension of comment period for MAR Notice No. 24-21-346 at page 934 of the 2019 Montana Administrative Register, Issue Number 13.

3. The department held a public hearing on July 26, 2019. No members of the public attended, and no testimony or written comments were received during the comment period.

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

/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 August 13, 2019.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.207.508 pertaining to ad)
valorem tax appraisal experience)

TO: All Concerned Persons

1. On April 26, 2019, the Board of Real Estate Appraisers (board) published MAR Notice No. 24-207-43 regarding the public hearing on the proposed amendment of the above-stated rule, at page 420 of the 2019 Montana Administrative Register, Issue No. 8.

2. On May 21, 2019, a public hearing was held on the proposed amendment of the above-stated rule in Helena. Several comments were received by the May 24, 2019 deadline.

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

COMMENT 1: Several commenters supported the proposed amendment noting that while the scope of work in mass appraisal is different than that of a single property appraisal, the skills required for each are the same and are gained through field work, data collection, in-office mentoring, and value setting. The commenter asserted that because individuals, whether involved in mass appraisal or single property appraisal, may have different levels of experience, the AQB requires a three-prong approach for certifying appraisers that includes education and examination in addition to experience.

RESPONSE 1: The board notes the commenters' support as consistent with the board's reason for the rule proposal. The board recognizes that the appraisal industry is evolving due to changes in technology, finance, and legislation, and that it is appropriate to embrace a broader view of the appraisal industry that fits within the qualification and practice standards of the Appraisal Foundation (i.e., AQB criteria and USPAP). The proposal to modify this rule is consistent with the board's adoption of the AQB criteria in its entirety.

COMMENT 2: One commenter supported the amendments and stated that allowing ad valorem tax appraisal experience will provide an alternative avenue to obtaining a single property appraiser license, with the understanding that the ad valorem applicant is also required to complete the AQB education and exam criteria for licensure. The commenter stated it is currently difficult to obtain that experience unless a person personally knows a certified appraiser willing to mentor them as they gain that experience.

RESPONSE 2: The board notes the commenter's support of the proposed rule as consistent with the board's reason for the rule proposal.

COMMENT 3: In opposing the amendments, several commenters opined that an alternate path for Department of Revenue (DOR) appraisers to apply ad valorem appraisal experience toward licensure without undergoing a training program is different than what is required for all other applicants and unfair for those who had to do a mentorship to become licensed. They further stated that a mentor provides for a greater understanding of the appraisal process which would be absent for ad valorem tax appraisers.

RESPONSE 3: The board notes that many of the commenters were licensed appraisers who expressed unfairness in providing an alternate path to licensure. It is important for the board to be responsive to changes in the industry and continue to advocate for licensure, so individuals can be held accountable for performing work according to standards.

The type of work that is done by ad valorem appraisers is different from that done by single property appraisers, but both types of experience are accepted by the Appraisal Qualifications Board of the Appraisal Foundation (AQB). Both types of applicants are subject to training and supervision and will be required to complete the same number of hours of their relevant experience. Department of Revenue supervisors are not required to be licensed or certified appraisers but will be required to attest that all hours submitted by the ad valorem applicant comply with USPAP, just as single property appraiser supervisors do for single property appraiser trainees.

Ideally, all mentors who supervise single property appraisers provide a greater understanding of the appraisal process to their trainees. However, because the quality of supervision may vary from individual to individual, the only way to quantify the quality of the supervision is to set minimum standards for how the work is to be done and have the individual supervisor attest that those standards have been met in the performance of the experience. In this regard, there is no difference between ad valorem and single property appraisers.

COMMENT 4: Several commenters opposed the changes because they would allow people to acquire licensure or certification with a fraction of the experience, education, and hard work that others have dedicated.

RESPONSE 4: While the board acknowledges that ad valorem experience and single property appraisal experience are different, the AQB criteria will require both types of applicants to have the same number of hours of experience, the same education courses, and to pass the same licensing examination. In addition, the board will require ad valorem tax appraisers to submit evidence of International Association of Assessing Officers (IAAO) training and testing relevant to the license type applied for and one demonstration appraisal report meeting USPAP Standards 1 and 2. The written report is required because the board understands that the underlying work product is different for ad valorem appraisers than it is for fee appraisers who do produce Standards 1 and 2 reports as part of their experience.

COMMENT 5: One commenter asserted that the proposed changes will result in an overabundance of appraisal licensees and will negatively impact existing Montana appraisers.

RESPONSE 5: The board does not have authority to control or limit the number of licenses it issues. Such controls or limits could be considered an illegal restraint of trade and subject the board and board members to antitrust liability. The board's mission is to regulate to protect Montana consumers of appraisal services without engaging in unreasonable restraint of trade. Arguably, an overabundance of Montana appraisers would benefit consumers by increasing the turnaround time of appraisals, choice, cost, and innovation.

COMMENT 6: Many commenters opposed the amendments because the experience gained through conducting ad valorem appraisals does not involve the entire appraisal process required by the AQB definition of "experience hours," as follows:

The quantitative experience requirements must be satisfied by time spent in the appraisal process. The appraisal process consists of: analyzing factors that affect value; defining the problem; gathering and analyzing data; applying the appropriate analysis and methodology; and arriving at an opinion and correctly reporting the opinion in compliance with USPAP. *Real Property Appraiser Qualifications Criteria* (eff. May 1, 2018), Part V, ¶B

The commenters noted that if ad valorem appraisers have duties that meet each of the factors listed in the definition, the experience would be acceptable and opined that assessors use formulas and do not analyze market data.

RESPONSE 6: The board acknowledges that the experience of an ad valorem appraiser is different than that gained by a single property appraiser. Assessors do not just use formulas, they also analyze market data. The commenters seem to fail to recognize that the AQB allows for the different types of experience. The definition of qualifying experience for licensure is not limited to Part V, ¶B as suggested by the comment. It is defined in Part V ¶¶A through H and in Part V, ¶E, the AQB specifically acknowledges that "mass appraisal" is acceptable real property appraisal practice for experience credit. "Ad valorem tax appraisal" is a type of "mass appraisal" recognized by USPAP Standards 5 and 6.

COMMENT 7: One commenter argued against the proposal stating there should be no exceptions to the AQB's experience requirements.

RESPONSE 7: As noted in RESPONSE 6, the allowance of ad valorem tax (mass appraisal) experience is not an exception to the *Real Property Appraiser Qualifications Criteria* (May 1, 2018).

COMMENT 8: One commenter suggested only allowing a portion of the mass appraisal experience to count toward the total hours.

RESPONSE 8: In the past, the board's rule only gave credit for 50 percent of the total experience hours of ad valorem work. This is inconsistent with the AQB criteria and unreasonable because of the relative difficulty individuals experience in finding single property appraisal supervisors who will hire a trainee.

COMMENT 9: One commenter urged the board to require submission of more than one report demonstrating all approaches to value and understanding of property-specific appraisal work, as is required for "traditional" applicants.

RESPONSE 9: Because the scope of practice associated with the license will produce Standards 1 and 2 reports, the board determined it is necessary for an applicant to demonstrate the ability to produce one demonstration report complying with Standards 1 and 2. The evidence considered by the board in proposing that one report be required does not support requiring more than one report.

COMMENT 10: One commenter questioned how, aside from administrative efficiency, the board's adoption of the AQB requirements in whole protects the public and how the proposed rule better serves the public.

RESPONSE 10: The AQB requirements represent a U.S. congressionally authorized, national standard to become an appraiser and to perform appraisals. The board must meet or exceed this standard. Where the board has evidence of a legitimate risk to consumers not addressed by the federal law, it has the authority to propose regulations that are stricter than the federal law. Except as noted for training certification and a demonstration report, the board has no evidence to support stricter requirements.

The AQB requirements adopted by the board protect the public by providing consumers with independent, consistent, and objective appraisals.

From an antitrust perspective, the board must also balance anti-competitive impacts with pro-competitive impacts. The pro-competitive impacts of the proposed change will better serve the public by providing an opportunity for more practitioners to enter the profession and relieve the stress on rural areas experiencing a lack of appraisers. Mortgage consumers may be able to achieve appraisals more quickly and less expensively. The real estate appraisal practice act in Montana only requires licensure for the performance of federally related transactions, allowing unlicensed persons to perform appraisals outside of this boundary. Licensure allows the board to exercise jurisdiction over an individual's practice and allows consumers a path to file complaints for unprofessional conduct.

COMMENT 11: One commenter opposed counting experience gained by county assessors because their property assessments are often biased and unfounded. Another commenter asserted that certain county Department of Revenue appraisal offices engage in unethical behavior.

RESPONSE 11: The board does not share the opinions expressed in the comments.

COMMENT 12: One commenter was concerned that if a person, after receiving a license based on ad valorem experience, leaves Department of Revenue employment, the person would still hold a license and prepare appraisals in "direct competition with qualified, certified individuals."

RESPONSE 12: The commenter appears to understand the board to be proposing a new license category to issue licenses for ad valorem appraisers. While some states have created such licenses, that is not the board's proposal. Further, the board does not exist to protect existing licensed appraisers from competition from new appraisers.

COMMENT 13: One commenter urged the board to provide Department of Revenue employees a path to certification that requires IAAO education and defined years of experience, if those Department of Revenue employees still meet the same education and experience as required of everyone in the past.

RESPONSE 13: The commenter offers no evidence or rationale for this assertion other than the implicit idea of "fairness." As market conditions, federal regulation, and technology impact the appraisal industry, the Appraisal Foundation and the board have reduced the required number of hours of experience and education. Individuals licensed when the requirements were more onerous could argue that reducing the requirements was unfair to them. The changes to the rules have been made and individuals may apply for licensure under the rules in effect at the time of their applications. Additionally, see RESPONSES 3, 4, and 6.

COMMENT 14: One commenter asserted that compliance with USPAP on all levels is being removed.

RESPONSE 14: The commenter provides no evidence or rationale for the assertion. Further, *Real Property Appraiser Qualifications Criteria* (eff. May 1, 2018), Part V, ¶E states in relevant part as follows:

All experience must be obtained after January 30, 1989, and must be USPAP-compliant. An applicant's experience must be in appraisal work conforming to Standards 1, 2, 3, 4, 5, and/or 6, where the appraiser demonstrates proficiency in appraisal principles, methodology, procedures (development), and reporting conclusions.

The board will select work product from the mass appraisal experience log and review it against this standard. The board must maintain documentation of this review for compliance auditing by the Appraisal Subcommittee policy managers.

COMMENT 15: A few commenters argued that allowing persons with mass appraisal experience to perform single property appraisals will drastically reduce the

quality of appraisals, jeopardize the housing market, and result in substantial liabilities for homeowners. The commenters further asserted that accepting experience from mass appraising lowers the bar for entry into the profession and threatens the appraisal profession.

RESPONSE 15: The acceptance of "mass appraisal experience" by the AQB is a strong indicator that individuals whose experience is gained by doing mass appraisals are no more or less likely to produce substandard appraisals than single property appraisers that would negatively impact the housing market or threaten the appraisal profession. Given the endorsement of this type of experience by the AQB, speculation about what may transpire is not sufficient evidence to vary from the AQB standard. The board will monitor the impact of broadening the allowable experience to become licensed through the complaint process.

COMMENT 16: A few commenters described the appraisal industry as "under attack" and asserted that the rule proposal is a subterfuge to relegate the profession to obscurity. They also stated that allowing "untrained" people is a waste of all the work appraisers have done since 1989 to convince the public that appraisers are trustworthy and valuable.

RESPONSE 16: The board's authority is limited to setting and enforcing standards for licensure that protect the public interest. The board's jurisdiction and mission are limited to acting in the public interest, and neutral with respect to the appraisal industry. As repeated throughout the board's responses, allowing credit for mass appraisal experience does not mean that applicants will not be required to take education and pass a licensing examination.

The board does agree with the cause-and-effect argument between allowing ad valorem experience to qualify an individual for licensure and the reputation of all appraisers.

4. The board has amended ARM 24.207.508 exactly as proposed.

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

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

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

Certified to the Secretary of State August 13, 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):

- | | |
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| 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 March 15, 2019, through August 9, 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.

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

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- | | |
|----------|--|
| 2-4-581 | Accounting and Financial Reporting Standards - Report Filing Fees - Filing Penalties - Waivers and Extensions of Penalties - Audit and Audit Reporting Standards - Roster of Independent Auditors - Resolution and Corrections of Audit Findings - Financial Reviews - Incorporation by Reference of Various Standards, Accounting Policies, and Federal Laws and Regulations - Audit Contracts, p. 761, 987 |
| 2-13-585 | Public Safety Answering Point (PSAP) Certification and Funding, p. 558, 903 |
| 2-59-572 | Definitions for Credit Unions, p. 2357, 290 |

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- | | |
|----------|--|
| 2-43-578 | Adopting by Reference the Amended State of Montana Public Employees Pooled Trust in the Defined Contribution Retirement Plan - Adopting by Reference the Amended Stable Value Fund Investment Policy Statement in the Defined Contribution Retirement Plan and the 457(b) Deferred Compensation Plan - Adopting by Reference the |
|----------|--|

- Amended State of Montana Public Employees Pooled Trust in the 457(b) Deferred Compensation Plan, p. 1, 288
- 2-43-582 Investment Policy Statements for the Defined Contribution Retirement Plan and the 457(b) Deferred Compensation Plan, p. 251, 424
- 2-43-583 Investment Policy Statements for the Defined Contribution Retirement Plan and the 457(b) Deferred Compensation Plan, p. 410, 736

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- 4-19-255 Hemp, p. 254, 532
- 4-19-256 Financial Responsibility, p. 264, 537
- 4-19-257 State Noxious Weed List, p. 413, 825
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- 4-19-259 Certified Natural Beef Cattle Marketing Program, p. 702, 1047
- 4-19-260 Apiary Fees, p. 782, 1166
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- 4-19-262 Commodity Dealer Licenses, p. 1104
- 4-19-263 Pesticide Records and Registrations - Use of 1080 Livestock Protection Collars - M-44 Cyanide Capsules and Devices, p. 1109

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- 8-94-166 Administration of the Delivering Local Assistance (DLA) Program, p. 562, 955
- 8-94-171 Administration of the 2021 Biennium Federal Community Development Block Grant (CDBG) Program—Planning Grants, p. 1120
- 8-99-167 Certified Regional Development Corporation Program, p. 785, 1168
- 8-99-168 Implementation of the Big Sky Economic Development Trust Program, p. 788, 1169
- 8-100-169 Montana Board of Research and Commercialization Technology, p. 915
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10-55-286 Hazard and Emergency Plans, p. 564, 1049

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(Board of Nursing)

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(Board of Pharmacy)

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(Board of Public Accountants)

24-201-52 Alternatives and Exemptions - Verification - Exercise of Practice
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(Board of Real Estate Appraisers)

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Experience - Inactive License/Certification - Inactive to Active License
- Trainee Requirements - Mentor Requirements - Registration and

Renewal of Appraisal Management Companies - Continuing Education-Compliance and Auditing - Unprofessional Conduct for Appraisers - Unprofessional Conduct for Appraisal Management Companies - Incorporation by Reference of the Real Property Appraiser Qualification Criteria - Appraiser Reporting Obligations to the Board - Appraisal Management Company Reporting Obligations to the Board - Regulatory Reviews - Experience-Number of Hours Required - Qualifying Education Requirements for Licensed Real Estate Appraisers - Qualifying Education Requirements for Residential Certification - Qualifying Education Requirements for General Certification - Scope of Practice - Continuing Education Noncompliance, p. 2166, 53, 636

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(Board of Realty Regulation)

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(Board of Respiratory Care Practitioners)

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(Board of Behavioral Health)

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(Commissioner of Political Practices)

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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in July 2019 appear. Potential vacancies from September 1, 2019 through November 30, 2019, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of August 1, 2019.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council			
Director Jason Smith	Governor	None Stated	7/3/2019
Helena			1/1/2021
Qualifications (if required): Director of Indian Affairs			
Best Beginnings Advisory Council			
Ms. Lucinda Burns	Governor	None Stated	7/1/2019
Lame Deer			7/1/2020
Qualifications (if required): Northern Cheyenne Tribe Child Care and Development Fund Program			
Board of Massage Therapy			
Ms. Margaret Holwick	Governor	Ryan	7/29/2019
Helena			5/1/2023
Qualifications (if required): Massage therapist			
Board of Pharmacy			
Dr. Starla Blank	Governor	Reappointed	7/1/2019
Clancy			7/1/2024
Qualifications (if required): Licensed Pharmacist			
Dr. Paul Edward Brand	Governor	Reappointed	7/1/2019
Florence			7/1/2024
Qualifications (if required): Licensed Pharmacist			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Physical Therapy Examiners			
Ms. Jennifer Lynn Lorengo Reisenauer Deer Lodge	Governor	Reappointed	7/1/2019 7/1/2022
Qualifications (if required): Licensed Physical Therapist			
Board of Professional Engineers and Professional Land Surveyors			
Dr. Mohammad Ruhul Amin Bozeman	Governor	Reappointed	7/1/2019 7/1/2023
Qualifications (if required): Professional Engineer (Mechanical)			
Mr. Raymond L. Gross Jr. Dillon	Governor	Reappointed	7/1/2019 7/1/2023
Qualifications (if required): Professional and practicing land surveyor			
Mr. Thomas D. Pankratz Clancy	Governor	Reappointed	7/1/2019 7/1/2023
Qualifications (if required): Professional Engineer (Electrical)			
Mr. Roger A. Wagner Nashua	Governor	Reappointed	7/1/2019 7/1/2023
Qualifications (if required): Representative of the public			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Radiologic Technologists			
Mr. Mike Nielsen	Governor	None Stated	7/29/2019
Billings			7/1/2022
Qualifications (if required): Radiologic Assistant			
Board of Regents of Higher Education			
Mr. John Randall Miller	Governor	Johnson	7/1/2019
Missoula			6/30/2020
Qualifications (if required): Student Regent			
Board of Veterans Affairs			
Mr. Anson Nygaard	Governor	Knutson	7/3/2019
Billings			8/1/2020
Qualifications (if required): U.S. Senator Jon Tester Representative			
Representative Marvin Weatherwax Jr.	Governor	Swanson	7/3/2019
Browning			8/1/2022
Qualifications (if required): State Administration and Veterans Affairs Committee Member			
Board of Water Well Contractors			
Mr. Patrick Joseph Byrne	Governor	Reappointed	7/3/2019
Great Falls			7/1/2022
Qualifications (if required): Licensed Montana water well contractor			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Building Codes Council			
Mr. Jason Douglas Poston Kalispell	Governor	Reappointed	7/29/2019 10/1/2020
Qualifications (if required): Elevator Mechanic			
Ms. Suzanne Small Trusler Ashland	Governor	Wonnacott	7/3/2019 10/1/2020
Qualifications (if required): Representative from the building contractor industry			
Mr. Joshua K. Wallery Helena	Governor	Reappointed	7/3/2019 10/1/2020
Qualifications (if required): Representative of the Manufactured Housing Industry			
Commission on Community Service			
Ms. Karin Billings Helena	Governor	Bryant	7/22/2019 7/1/2022
Qualifications (if required): Public Representative			
Ms. Pamela J. Carbonari Kalispell	Governor	Rector	7/22/2019 7/1/2020
Qualifications (if required): Representative of a nonprofit that works with Senior Citizens			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Commission on Community Service Cont.			
Ms. Tara Ferriter-Smith Helena	Governor	Olsen-Billings	7/22/2019 7/1/2021
Qualifications (if required): Agency Representative (OPI)			
Mr. James Larson Billings	Governor	Reappointed	7/22/2019 7/1/2022
Qualifications (if required): Organized Labor			
Ms. Heather Margolis Bozeman	Governor	Reappointed	7/22/2019 7/1/2022
Qualifications (if required): National Service Program			
Mr. Kevin Myhre Lewistown	Governor	Reappointed	7/22/2019 7/1/2022
Qualifications (if required): Business Representative			
Ms. Andrea L. Surratt Bozeman	Governor	Jones	7/22/2019 7/1/2022
Qualifications (if required): Local Government			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Committee on Telecommunications Access Services for Persons with Disabilities			
Mr. Ron Bibler	Governor	Reappointed	7/29/2019
Big Sky			7/1/2022
Qualifications (if required): Disabilities Community			
Ms. Chanda Hermanson-Dudley	Governor	Reappointed	7/29/2019
Helena			7/1/2022
Qualifications (if required): Representative of the Dept. of Public Health and Human Services			
Mr. John Pavao	Governor	Reappointed	7/29/2019
Helena			7/1/2022
Qualifications (if required): Member from the Department of Administration			
Ms. Tina Shorten	Governor	Reappointed	7/29/2019
Helena			7/1/2021
Qualifications (if required): Public Service Commission Representative			
Mr. James M. Streeter	Governor	Saylor	7/29/2019
Missoula			7/1/2021
Qualifications (if required): Disabilities Community			
Mr. Thomas Henry Thompson	Governor	None Stated	7/29/2019
Missoula			7/1/2022
Qualifications (if required): Person with a disability			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Montana Forest Action Advisory Council			
Mr. Terry Spang	Governor	None Stated	7/29/2019
Lame Deer			9/15/2020
Qualifications (if required): Northern Cheyenne Tribal Representative			
Mr. William Walks Along	Governor	None Stated	7/29/2019
Lame Deer			9/15/2020
Qualifications (if required): Northern Cheyenne Alternate			
Grizzly Bear Conservation and Management Advisory Council			
Mr. Bret N. Barney	Governor	None Stated	7/26/2019
Wyola			8/31/2020
Qualifications (if required): Livestock producer			
Mr. Chad Bauer	Governor	None Stated	7/26/2019
Missoula			8/31/2020
Qualifications (if required): Outdoor industry professional			
Dr. Darrin L. Boss	Governor	None Stated	7/26/2019
Havre			8/31/2020
Qualifications (if required): Hunter			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Grizzly Bear Conservation and Management Advisory Council Cont.			
Mr. Jonathan Bowler Condon	Governor	None Stated	7/26/2019 8/31/2020
Qualifications (if required):	Conservation group		
Mrs. Trina Jo Bradley Valier	Governor	None Stated	7/26/2019 8/31/2020
Qualifications (if required):	Livestock producer		
Ms. Caroline Byrd Bozeman	Governor	None Stated	7/26/2019 8/31/2020
Qualifications (if required):	Conservation group		
Ms. Michele Dieterich Hamilton	Governor	None Stated	7/26/2019 8/31/2020
Qualifications (if required):	Wildlife enthusiast		
Mrs. Erin Edge Missoula	Governor	None Stated	7/26/2019 8/31/2020
Qualifications (if required):	Conservation group		
Mr. Nick Gevock Helena	Governor	None Stated	7/26/2019 8/31/2020
Qualifications (if required):	Conservation organization		

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Grizzly Bear Conservation and Management Advisory Council Cont.			
Senator Lorents Grosfield	Governor	None Stated	7/26/2019
Big Timber			8/31/2020
Qualifications (if required): Livestock producer			
Mr. Kameron Kelsey	Governor	None Stated	7/26/2019
Gallatin Gateway			8/31/2020
Qualifications (if required): Livestock producer			
Ms. Robyn King	Governor	None Stated	7/26/2019
Troy			8/31/2020
Qualifications (if required): Conservation group			
Mrs. Kristen Ellen Lime	Governor	None Stated	7/26/2019
Browning			8/31/2020
Qualifications (if required): Tribal member			
Mr. Cole Mannix	Governor	None Stated	7/26/2019
Helena			8/31/2020
Qualifications (if required): Conservation organization			
Mr. Heath Eric Martinell	Governor	None Stated	7/26/2019
Dell			8/31/2020
Qualifications (if required): Livestock producer			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Grizzly Bear Conservation and Management Advisory Council Cont.			
Mr. Chuck Roady	Governor	None Stated	7/26/2019
Columbia Falls			8/31/2020
Qualifications (if required): Community leader			
Mr. Gregory Oliver Schock	Governor	None Stated	7/26/2019
Saint Ignatius			8/31/2020
Qualifications (if required): Livestock producer			
Ms. Anne Schuschke	Governor	None Stated	7/26/2019
East Glacier			8/31/2020
Qualifications (if required): Outdoor industry professional			
Historical Society Board of Trustees			
Mr. A. Clifford Edwards	Governor	Reappointed	7/29/2019
Billings			7/1/2024
Qualifications (if required): Public Representative			
Dr. Sara Alicia Scott	Governor	Court	7/29/2019
Missoula			7/1/2024
Qualifications (if required): Public Representative			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Historical Society Board of Trustees Cont.			
Mr. Michael Gerard Shields	Governor	Reappointed	7/29/2019
Helena			7/1/2024
Qualifications (if required): Public Representative			
Invasive Species Council (ISC)			
Ms. Christy Clark	Governor	Reappointed	7/3/2019
Helena			5/9/2021
Qualifications (if required): Department of Agriculture Director or designee			
Judicial Standards Commission			
Ms. Jennifer L. Eck	Governor	Reappointed	7/3/2019
Helena			7/1/2023
Qualifications (if required): Citizen who is not an attorney or judge of any court			
Juvenile Interstate Compact Commissioner			
Ms. Cathy Gordon	Governor	Ray	7/29/2019
Helena			1/1/2021
Qualifications (if required): None Stated			
Libby Asbestos Superfund Oversight Committee			
Mr. George F. Jamison	Governor	Reappointed	7/1/2019
Libby			7/1/2021
Qualifications (if required): Citizen of Lincoln County			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Agriculture Development Council			
Ms. Amy Nielsen Smith	Governor	Reappointed	7/3/2019
Kalispell			7/1/2022
Qualifications (if required): Member who is or has been actively engaged in agriculture			
Mr. John Russel Wicks	Governor	Jergeson	7/3/2019
Ledger			7/1/2022
Qualifications (if required): Member who is or has been actively engaged in agriculture			
Montana Climate Solutions Council			
Ms. Jennifer Anders	Governor	None Stated	7/22/2019
Helena			8/1/2020
Qualifications (if required): Northwest Power Planning Council Representative			
Mr. Tom Armstrong	Governor	None Stated	7/22/2019
Bozeman			8/1/2020
Qualifications (if required): Member representing various geographic areas			
Mr. Scott Bischke	Governor	None Stated	7/22/2019
Bozeman			8/1/2020
Qualifications (if required): Member representing various geographic areas			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Climate Solutions Council Cont.			
Mr. Bill Bryan Bozeman	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Ms. Amy Cilimburg Missoula	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Mr. Alan Ekblad Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Ms. Sally Ericsson Whitefish	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Ms. Kathy Hadley Deer Lodge	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Co-Chair, Member representing various geographic areas			
Mr. Mark Haggerty Bozeman	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Climate Solutions Council Cont.			
Mr. David Hoffman Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Commissioner Galen Hollenbaugh Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Director of the Department of Labor and Industry			
Mr. Patrick Holmes Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Co-Chair, Governor's Office Representative			
Ms. Kelsey Jensco Missoula	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Director John Lewis Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Director of the Department of Administration			
Mr. Chuck Magraw Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Climate Solutions Council Cont.			
Ms. Jayne Marrow Chinook	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Mr. Bruce Maxwell Bozeman	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Director Shaun McGrath Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Director of the Department of Environmental Quality			
Mr. Todd O'Hair Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Mr. Alan Olson Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Ms. Caitlin Piserchia Missoula	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Climate Solutions Council Cont.			
General Matthew Quinn Fort Harrison	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Director of the Department of Military Affairs			
Director Tara Rice Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Director of the Department of Commerce			
Mr. Frank Diego Rivas Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Mr. Eric Somerfeld Power	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Mr. Lee Spangler Bozeman	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Ms. Tracy Stone Manning Missoula	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Climate Solutions Council Cont.			
Mr. Joe Thiel Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Director Ben Thomas Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Director of the Department of Agriculture			
Mr. Steve Thompson Butte	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Director Mike Tooley Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Director of the Department of Transportation			
Director John Tubbs Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Director of the Department of Natural Resources and Conservation			
Mr. Paul Tuss Havre	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Climate Solutions Council Cont.			
Mr. Andrew Valainis Missoula	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Mr. Gerald Wagner Browning	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Ms. Charlene Waters Alden Lame Deer	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Ms. Cathy Whitlock Bozeman	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Mr. Gary Wiens Great Falls	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Director Martha Williams Helena	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Director of the Department of Fish, Wildlife and Parks			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Climate Solutions Council Cont.			
Ms. Laura Wood Peterson Billings	Governor	None Stated	7/22/2019 8/1/2020
Qualifications (if required): Member representing various geographic areas			
Montana Organic Commodity Advisory Council			
Ms. Lindsey Aull Hamilton	Governor	None Stated	7/12/2019 8/19/2022
Qualifications (if required): Producer			
Mr. Patrick Carr Moccasin	Governor	None Stated	7/12/2019 8/19/2022
Qualifications (if required): Consumer			
Mr. Matt Johnson Hinsdale	Governor	None Stated	7/12/2019 8/19/2020
Qualifications (if required): Producer			
Mr. Ty O'Connor Broadus	Governor	None Stated	7/12/2019 8/19/2020
Qualifications (if required): Producer			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Organic Commodity Advisory Council Cont.			
Ms. Catherine Odden Dutton	Governor	None Stated	7/12/2019 8/19/2020
Qualifications (if required): At-Large			
Mr. Nate Powell-Palm Bozeman	Governor	None Stated	7/12/2019 8/19/2022
Qualifications (if required): Livestock Producer			
Mr. Sam Schmidt Great Falls	Governor	None Stated	7/12/2019 8/19/2022
Qualifications (if required): Organic Handler			
Director Ben Thomas Helena	Governor	None Stated	7/12/2019 7/1/2021
Qualifications (if required): Director of the Department of Agriculture			
Montana Pulse Crop Committee			
Dr. Sreekala Bajwa Bozeman	Governor	Boyer	7/1/2019 6/30/2022
Qualifications (if required): Dean of Agriculture of Montana State University			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Pulse Crop Committee Cont.			
Mr. Matthew William Franks Sheridan	Governor	Williams	7/1/2019 6/30/2022
Qualifications (if required): Representative of the pulse industry			
Montana Tax Appeal Board			
Mr. Eric Stern Helena	Governor	Balukas	7/26/2019 1/1/2023
Qualifications (if required): Public Representative			
Potato Commodity Advisory Committee			
Mr. William F. Buyan Jr. Sheridan	Governor	None Stated	7/12/2019 3/1/2020
Qualifications (if required): Potato Producer			
Mr. Dave Cottom Dillon	Governor	None Stated	7/12/2019 3/1/2020
Qualifications (if required): Potato Producer			
Mr. Tim Lake Polson	Governor	None Stated	7/12/2019 3/1/2021
Qualifications (if required): Potato Producer			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Potato Commodity Advisory Committee Cont.			
Mr. Jack Meyer Manhattan	Governor	None Stated	7/12/2019 3/1/2021
Qualifications (if required): Potato Producer			
Mr. Jonathan Schutter Manhattan	Governor	None Stated	7/12/2019 3/1/2022
Qualifications (if required): Potato Producer			
Mr. Paul Streich Kalispell	Governor	None Stated	7/12/2019 3/1/2023
Qualifications (if required): Potato Producer			
Mr. Tim Venhuizen Manhattan	Governor	None Stated	7/12/2019 3/1/2020
Qualifications (if required): Potato Producer			
State Council for Compact on Educational Opportunity for Military Children			
Superintendent Tom Moore Great Falls	Governor	Lacey	7/1/2019 7/1/2021
Qualifications (if required): Superintendent of a school district			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Electrical Board			
Mr. Rick Hutchinson	Governor	Reappointed	7/3/2019
Black Eagle			7/1/2024
Qualifications (if required): Licensed Electrician			
State Lottery Commission			
Mr. John Tarr	Governor	Price	7/3/2019
Helena			1/1/2022
Qualifications (if required): Public Representative			
State-Tribal Economic Development Advisory Council			
Ms. Jestin Dupree	Governor	Miller	7/3/2019
Poplar			7/1/2022
Qualifications (if required): Fort Peck Tribes Alternative Representative			
Mr. Carl Kipp	Governor	None Stated	7/3/2019
Browning			7/1/2021
Qualifications (if required): Blackfeet Nation Alternate Representative			
Ms. Cheryl Reevis	Governor	Barnes	7/3/2019
Browning			7/1/2021
Qualifications (if required): Blackfeet Nation Representative			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State-Tribal Economic Development Advisory Council Cont.			
Councilwoman Kacie Walette	Governor	Headdress	7/3/2019
Poplar			7/1/2022
Qualifications (if required): Fort Peck Tribes Representative			
Statewide Independent Living Council			
Ms. Beverly Ann Berg	Governor	Carlyon-Sanders	7/3/2019
Great Falls			12/1/2021
Qualifications (if required): Designated State Unit Representative			
Ms. Barbara Louise Davis	Governor	Reappointed	7/3/2019
Missoula			12/1/2021
Qualifications (if required): Person with a disability not employed by a state agency			
Mr. Richard Scott Williamson	Governor	Williamson	7/3/2019
Ronan			12/1/2021
Qualifications (if required): Person with a disability employed by a State Agency			
Teachers' Retirement Board			
Mr. Daniel Trost	Governor	Reappointed	7/1/2019
Helena			7/1/2024
Qualifications (if required): Representative of the public			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Western Interstate Commission for Higher Education			
Ms. Sheila Stearns	Governor	Reappointed	7/1/2019
Missoula			7/1/2023
Qualifications (if required): Member engaged in a professional occupation			

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
9-1-1 Advisory Council		
Mr. Geoffrey Feiss, Helena Qualifications (if required): Representative of Montana Telecommunications Providers	Governor	9/1/2019
Chief Mike Doto, Butte Qualifications (if required): Representative of the Montana State Volunteer Firefighter 's Assoc.	Governor	9/1/2019
Administrator Delila Bruno, Fort Harrison Qualifications (if required): Representative of the Department of Military Affairs	Governor	9/1/2019
Captain Curtis Stinson, Helena Qualifications (if required): Representative of the Montana Association of Chiefs of Police	Governor	9/1/2019
Col. Thomas Butler, Helena Qualifications (if required): Representative of the Dept. of Justice, Montana Highway Patrol	Governor	9/1/2019
Ms. Lisa Kelly, Kalispell Qualifications (if required): Representative of Montana Telecommunications Providers	Governor	9/1/2019
Commissioner Gary A. Macdonald, Wolf Point Qualifications (if required): Representative of the Montana Assoc. of Counties	Governor	9/1/2019
Mr. Timothy Bottenfield, Helena Qualifications (if required): Dept. of Administration Director or Designee, Presiding Officer	Governor	9/1/2019

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Achieving a Better Life Experience (ABLE) Program Oversight Committee		
Ms. Theresa Louise Baldry, Miles City Qualifications (if required): Experience working on behalf of disabled individuals	Governor	9/1/2019
Director Sheila Hogan, Helena Qualifications (if required): Director of the Department of Administration or designee	Governor	9/1/2019
Ms. Novelene Martin, Miles City Qualifications (if required): Director of the Department of Public Health and Human Services or designee	Governor	9/1/2019
Alternative Health Care Board		
Dr. Sandy Shepherd, Missoula Qualifications (if required): Montana physician whose practice includes obstetrics	Governor	9/1/2019
Board of Athletic Trainers		
Mr. Kaleb Birney, Dillon Qualifications (if required): Athletic trainer	Governor	10/1/2019
Ms. Nichole Borst, Havre Qualifications (if required): Athletic trainer	Governor	10/1/2019
Mr. John Curtis Weida, Missoula Qualifications (if required): Athletic Trainer	Governor	10/1/2019

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Outfitters		
Mr. Todd Clifford Earp, Corvallis Qualifications (if required): Outfitter	Governor	10/1/2019
Board of Psychologists		
Dr. James Murphey, Bozeman Qualifications (if required): Licensed Psychologist	Governor	9/1/2019
Dr. Paul Silverman, Missoula Qualifications (if required): Licensed Psychologist	Governor	9/1/2019
Burial Preservation Board		
Mr. Tom Escarcega, Poplar Qualifications (if required): Representative of the Fort Peck Assiniboiné and Sioux Tribes	Governor	9/1/2019
Ms. Skye Gilham, Cut Bank Qualifications (if required): Physical anthropologist	Governor	9/1/2019
Dr. Stan Wilmoth, Helena Qualifications (if required): Representative of the Montana state historical preservation officer	Governor	9/1/2019
Historical Records Advisory Council		
Ms. Heather C. Hultman, Bozeman Qualifications (if required): Research institution	Governor	10/1/2019

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Historical Records Advisory Council Cont.		
Ms. Jodie Foley, Helena Qualifications (if required): State Archivist	Governor	10/1/2019
Ms. Anne L. Foster, Gardiner Qualifications (if required): Public archives	Governor	10/1/2019
Ms. Aubrey Japp, Butte Qualifications (if required): Public archives	Governor	10/1/2019
Ms. Katheryn Marie Kramer, Great Falls Qualifications (if required): Private archives	Governor	10/1/2019
Ms. Kathleen D. Mumme, Virginia City Qualifications (if required): Private archives	Governor	10/1/2019
Ms. Eileen A. Wright, Billings Qualifications (if required): Research institution	Governor	10/1/2019
Montana Achieving a Better Life Experience (ABLE) Program Oversight Committee		
Director John Lewis, Helena Qualifications (if required): Director of the Department of Administration	Governor	9/1/2019
Noxious Weed Seed Free Forage Advisory Council		
Mr. David Wichman, Moccasin Qualifications (if required): MSU Agriculture Research Center	Governor	9/1/2019

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Noxious Weed Seed Free Forage Advisory Council Cont.		
Mr. James Melin, Livingston Qualifications (if required): Forage Producer Representative	Governor	9/1/2019
Mr. Carter Butori, Dillon Qualifications (if required): Forage Producer	Governor	9/1/2019
Mr. Bob Rangitsch, Ovando Qualifications (if required): Livestock/Agriculture	Governor	9/1/2019
Mr. Larry Dorn, Hardin Qualifications (if required): Forage Producer Representative	Governor	9/1/2019
Director Ben Thomas, Helena Qualifications (if required): Director of the Department of Agriculture	Governor	9/1/2019
Ms. Margie Edsall, Virginia City Qualifications (if required): Rep. cty weed dist forage cert.	Governor	9/1/2019
Mr. Joe Lockwood, Billings Qualifications (if required): Rep. cty weed dist forage cert., MT Weed Control Assn and from diff. areas of state	Governor	9/1/2019
Ms. Jane Mangold, Bozeman Qualifications (if required): Montana State University-Bozeman Extension Service	Governor	9/1/2019

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Noxious Weed Seed Free Forage Advisory Council Cont.		
Mr. Vince Muggli, Miles City Qualifications (if required): Feed/Pellet/Cube Representative	Governor	9/1/2019
Mr. Chuck Miller, Hamilton Qualifications (if required): Forage Producer Representative	Governor	9/1/2019
Mr. Wade Durham, Cameron Qualifications (if required): Outfitter/Guide	Governor	9/17/2019
State Emergency Response Commission		
Mr. Bruce Suenram, Missoula Qualifications (if required): Department of Natural Resources and Conservation	Governor	10/1/2019
Mr. William T. Rhoads, Butte Qualifications (if required): Utility Company doing business in Montana	Governor	10/1/2019

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Emergency Response Commission Cont.		
Chief Thomas Kuntz, Red Lodge Qualifications (if required): Fire Service Association	Governor	10/1/2019
Commissioner Michael McGinley, Dillon Qualifications (if required): Montana Association of Counties	Governor	10/1/2019
Mr. Joe Marcotte, Billings Qualifications (if required): Montana Hospitals	Governor	10/1/2019
Mr. Jim DeTienne, Helena Qualifications (if required): DPHHS Emergency Medical Services and Trauma Systems	Governor	10/1/2019
Mr. Jim Murphy, Helena Qualifications (if required): Department of Public Health and Human Services	Governor	10/1/2019
Mr. Ron Jendro, Helena Qualifications (if required): Department of Fish, Wildlife and Parks	Governor	10/1/2019
Mr. Dale S. Nelson, Ronan Qualifications (if required): Tribal Emergency Response Commission	Governor	10/1/2019
Ms. Bonnie Lovelace, Helena Qualifications (if required): Department of Environmental Quality	Governor	10/1/2019
Col. Thomas Butler, Helena Qualifications (if required): Department of Justice	Governor	10/1/2019

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Emergency Response Commission Cont.		
Administrator Delila Bruno, Fort Harrison Qualifications (if required): Representative of the Department of Military Affairs	Governor	10/1/2019
Mr. Scott Sanders, Belgrade Qualifications (if required): Emergency Medical Services Association	Governor	10/1/2019
Chief John Turner, Fort Benton Qualifications (if required): Law Enforcement Association	Governor	10/1/2019
Ms. Judy LaPan, Sidney Qualifications (if required): Public Health related Association	Governor	10/1/2019
Mrs. Michelle L. Slyder, Billings Qualifications (if required): Montana's Petroleum Industry	Governor	10/1/2019
Captain Patrick Lonergan, Bozeman Qualifications (if required): Emergency Management Association	Governor	10/1/2019
Ms. Siri Smillie, Helena Qualifications (if required): Governor's Office Representative	Governor	10/1/2019
Mr. Walt Kerttula, Helena Qualifications (if required): Department of Transportation	Governor	10/1/2019
Ms. Tara T. Moore, Bozeman Qualifications (if required): University System	Governor	10/1/2019

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Emergency Response Commission Cont.		
Mr. Anthony Bacino, Missoula Qualifications (if required): Railroad Company doing business in Montana	Governor	10/1/2019
Mr. Donald Britton, Great Falls Qualifications (if required): National Weather Service	Governor	10/1/2019
Mr. Gregory Thomas Doyon, Great Falls Qualifications (if required): Representative of the Montana League of Cities and Towns	Governor	10/1/2019
Mr. Bob Habeck, Helena Qualifications (if required): Representative of the Department of Environmental Quality	Governor	10/1/2019
Mr. Brian Wilkinson, Malmstrom AFB Qualifications (if required): Malmstrom Air Force Base representative	Governor	10/1/2019
Mr. Andy Fjeseth, Helena Qualifications (if required): Department of Agriculture Representative	Governor	10/1/2019
Mr. Thomas Luhrsen, Bozeman Qualifications (if required): University Representative	Governor	10/1/2019
Mr. Chadwick Alex Messerly, Missoula Qualifications (if required): Trucking Industry Representative	Governor	10/1/2019
Mr. John Culbertson, Great Falls Qualifications (if required): Fire Services Training School	Governor	10/1/2019

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Emergency Response Commission Cont.		
MSG Larry Ganieany, Fort Harrison Qualifications (if required): National Guard	Governor	10/1/2019
TSgt. Jonathan D. Maas, Malmstrom AFB Qualifications (if required): Air Force	Governor	10/1/2019
Ms. Sherry Rust, Helena Qualifications (if required): Department of Agriculture	Governor	10/1/2019
Mr. Daniel Anthony Kaluza, Butte Qualifications (if required): Utility company doing business in Montana	Governor	10/1/2019
Ms. Maleen B. Olson, Helena Qualifications (if required): Insurance Industry Representative	Governor	10/1/2019
Mr. Bradley Michael Shoemaker, Billings Qualifications (if required): Montana Emergency Medical Services Assoc. Representative	Governor	10/1/2019
Mr. Raphael Graybill, Helena Qualifications (if required): Governor's Office Representative	Governor	10/1/2019
Major Jeffrey Alan Holycross, Helena Qualifications (if required): National Guard Representative	Governor	10/1/2019
Mrs. Georgia Bruski, Ekalaka Qualifications (if required): Montana Emergency Management Association Representative	Governor	10/1/2019

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Emergency Response Commission Cont. Ms. Hayley Tuggle, Bozeman Qualifications (if required): University Representative	Governor	10/1/2019
State Historical Preservation Review Board Ms. Debra Hronek, Red Lodge Qualifications (if required): Member of the public	Governor	10/1/2019
Ms. Patti Casne, Helena Qualifications (if required): Member of the public	Governor	10/1/2019
Mr. Timothy Urbaniak, Billings Qualifications (if required): Member of the public	Governor	10/1/2019
State Rehabilitation Council Ms. Barbara Louise Davis, Missoula Qualifications (if required): Statewide Independent Living Council Representative	Governor	10/1/2019
Ms. Kathy Jean Hampton, Helena Qualifications (if required): Client Assistance Program	Governor	10/1/2019
Ms. Susan Nielson, Miles City Qualifications (if required): Community Rehabilitation Program	Governor	10/1/2019

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Rehabilitation Council Cont.		
Mr. Frank Podobnik, Helena Qualifications (if required): Office of Public Instruction Representative	Governor	10/1/2019
Ms. Diana Hawbaker-Tavary, Helena Qualifications (if required): Parent Organization Representative	Governor	10/1/2019
Trauma Care Committee		
Mr. Clinton Loss, Helena Qualifications (if required): Montana Emergency Medical Services Association	Governor	11/1/2019
Dr. Whitney Gum, Billings Qualifications (if required): Member of the American College of Emergency Physicians	Governor	11/1/2019
Upper Clark Fork River Basin Remediation and Restoration Advisory Council		
Mr. James J. Kambich, Butte Qualifications (if required): Citizen voting member	Governor	9/1/2019
Director Tom Livers, Helena Qualifications (if required): State government non-voting member	Governor	9/1/2019
Mr. William Rossbach, Missoula Qualifications (if required): Citizen voting member	Governor	9/1/2019
Director John Tubbs, Helena Qualifications (if required): State government non-voting member	Governor	9/1/2019

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council Cont.		
Ms. Katherine Stromberg Eccleston, Anaconda Qualifications (if required): Citizen voting member	Governor	9/1/2019
Ms. Maureen Connor, Philipsburg Qualifications (if required): Citizens voting member	Governor	9/1/2019
Mr. James H. Davison, Anaconda Qualifications (if required): Citizen voting member	Governor	9/1/2019
Mr. Jon Krutar, Ovando Qualifications (if required): Citizen voting member	Governor	9/1/2019
Mr. Mick Ringsak, Butte Qualifications (if required): Citizen voting member	Governor	9/1/2019
Mr. Mark Sweeney, Philipsburg Qualifications (if required): Citizen voting member	Governor	9/1/2019
Director Martha Williams, Helena Qualifications (if required): State government non-voting member	Governor	9/1/2019
Ms. Susan Peterson, Drummond Qualifications (if required): Citizen voting member	Governor	9/1/2019
Mr. Shaun McGrath, Helena Qualifications (if required): None Stated	Governor	9/1/2019

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2019 THROUGH NOVEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Water and Wastewater Operators' Advisory Council		
Mr. Donald Coffman, Harlem	Governor	10/1/2019
Qualifications (if required): Water Treatment Plant Operator		
Mr. Logan McInnis, Missoula	Governor	10/1/2019
Qualifications (if required): Water Treatment Plant Operator		

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COREY STAPLETON
SECRETARY OF STATE

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