

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 adoption of New)	NOTICE OF PROPOSED ADOPTION
Rules I through IV pertaining to)	
government sponsored enterprises,)	
designated manager supervisory)	
requirements, false, deceptive, or)	
misleading advertising, and internet or	)	NO PUBLIC HEARING
electronic advertising	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 28, 2019, the Department of Administration proposes to adopt the above-stated rules.

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 November 22, 2019, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department is proposing to adopt NEW RULES I through IV to implement House Bill 107 (HB 107), which amended the Montana Mortgage Act (Act). HB 107 was passed by the 2019 Legislature, and was signed by the Governor on March 19, 2019.

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

NEW RULE I GOVERNMENT SPONSORED ENTERPRISES (1) The government-sponsored enterprises for the mortgage servicer capital requirements in the Montana Mortgage Act are:

- (a) Federal Home Loan Mortgage Corporation (Freddie Mac);
- (b) Federal National Mortgage Association (Fannie Mae); or
- (c) Federal Home Loan Banks (FHLBs).

AUTH: 32-9-171, MCA

IMP: 32-9-171, MCA

STATEMENT OF REASONABLE NECESSITY: HB 107 provides that the department may define by rule the list of government sponsored enterprises (GSEs). The GSEs are quasi-governmental entities established to enhance the flow of credit to specific sectors of the American economy. The identified GSEs were selected

because they focus on the housing and mortgage sectors and provide liquidity, operating reserve, and net worth standards for mortgage servicers.

NEW RULE II DESIGNATED MANAGER SUPERVISORY REQUIREMENTS

(1) If a designated manager supervises more than one location, a mortgage broker or mortgage lender must have a written policy which addresses supervision of multiple licensed locations.

(2) The policy must include the frequency of:

(a) communication between the designated manager and employees in remote locations;

(b) onsite visits by the designated manager to other licensed locations; and

(c) review of employee performance and of work performed.

(3) The policy must include the use of training, technology, and risk assessments by a mortgage broker or mortgage lender in respect to origination activities at licensed locations. A designated manager's role in training, if applicable, must be identified in the policy.

(4) A mortgage broker or mortgage lender must submit a copy of the policy to the department at the time a designated manager is assigned to supervise multiple locations. A mortgage broker or mortgage lender should resubmit a copy of the policy to the department within 30 days of amendments.

(5) The designated manager must attest that he or she has read the policy. This attestation must be signed by the designated manager and included whenever the policy is submitted to the department. The designated manager and all mortgage loan originators and employees of the mortgage broker or mortgage lender at each licensed location subject to the policy shall comply with the policy.

AUTH: 32-9-122, 32-9-130, MCA

IMP: 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: HB 107 amended 32-9-122(2), MCA, to allow a designated manager to be responsible for more than one location. It further clarified that the designated manager is responsible for mortgage origination activity conducted at each office to which this person is assigned in the Nationwide Mortgage Licensing System. Under 32-9-130(3)(b), MCA, the department is authorized to promulgate rules to define supervisory requirements for designated managers. New Rule II provides direction to mortgage brokers, mortgage lenders, and designated managers when a designated manager is responsible for supervising multiple locations. This new rule will aid the department's enforcement of the supervision requirements under the Act.

The department recognizes that technological advances have made it easier for managers to monitor and interact with employees. The mortgage industry has encouraged regulators to align regulations with common business practices, including remote supervision of employees. New Rule II(1) allows designated managers to supervise multiple licensed branch locations pursuant to a written policy. The department will review the operations of mortgage lenders and mortgage brokers to ensure the policy is implemented and effective to ensure adequate supervision of remote offices and staff.

New Rule II(2) and (3) set forth expectations for subjects the department expects to be included within the policy. It emphasizes the importance of communication, in-person contact, and supervision between the designated manager and employees at the licensed locations. These are core competencies that a designated manager performs which can contribute to better regulatory compliance during the origination of residential mortgage loans. A mortgage broker or mortgage lender may use training, technology, and risk assessments to enhance supervision of origination activities at licensed locations. Such training, technology, and risk assessments may be independent of the supervision provided by a designated manager, but these tools should be addressed in the remote supervision policy to provide a better overview of the overall supervision of origination activity at remote locations.

New Rule II(4) is necessary to establish that a mortgage broker or mortgage lender must submit the policy to the department initially when a designated manager is assigned to supervise multiple locations and again whenever the policy is amended. The department needs to see the policy to understand how the designated manager and mortgage broker or mortgage lender will ensure adequate supervision of its licensed locations.

New Rule II(5) provides that the designated manager must read and understand the policy. The purpose of (5) is to ensure all parties are complying with the policy and the remote supervision requirements under the Act.

NEW RULE III FALSE, DECEPTIVE, OR MISLEADING ADVERTISING

(1) False, deceptive, or misleading advertising includes but is not limited to advertising or marketing that:

- (a) is defined by this rule as false, deceptive, or misleading;
- (b) violates 32-9-149, MCA, or this rule;
- (c) violates any applicable state or federal unfair, deceptive, or abusive acts or practices laws or other laws applicable to advertising services authorized by or conducted under the Montana Mortgage Act.
- (2) An advertisement is false, deceptive, or misleading, if it:
 - (a) describes rates or fees as "lowest," "best," or other similar words unless the statement is objectively true;
 - (b) uses the term "free," or any other similar term or phrase that implies there is no cost to the applicant;
 - (c) offers to procure, arrange, or otherwise assist a borrower to obtain a mortgage loan on terms which the person cannot, does not intend, or does not want to provide, or which the person knows or should know cannot be reasonably provided;
 - (d) suggests or represents that all or most borrowers may or will qualify for a loan or that persons with bad credit histories or no credit histories may or will qualify for this loan unless the person can demonstrate that borrowers with bad credit or no credit have been routinely and successfully qualified for loans by that licensee; or
 - (e) fails to disclose that a loan has the potential for negative amortization. If a loan has the potential for negative amortization, the advertisement shall clearly identify that potential and shall prominently disclose the:
 - (i) market or fully indexed rate;

- (ii) term of the reduced payments;
- (iii) term of the entire loan; and
- (iv) annual percentage rate (APR).

(3) A licensee shall not use advertising materials for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by a federal, state, or local government agency or in a manner that suggests any affiliation that does not exist. Such advertising is considered false, deceptive, or misleading. Prohibited advertising materials include but are not limited to advertisements that include:

- (a) an official-looking emblem, logo, crest, or seal that resembles one used by any state or federal government agency. Such emblems may include an eagle, flag, the Statue of Liberty, or a crest or seal used by any state or the United States or used by any government agency or political subdivision;
- (b) images, including those in electronic format, designed to resemble official government communications, such as communications from the Internal Revenue Service or U.S. Treasury, a state taxing authority, or other government agencies;
- (c) warnings or notices citing government codes or form numbers not required by the United States Postal Service to be shown on the mailing;
- (d) the term "official business," or similar language implying official or government business, without also including the name of the sender;
- (e) any suggestion or representation that the solicitor is affiliated with any state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity that it does not actually represent;
- (f) any suggestion or representation that the solicitor is any entity other than the sender itself; or
- (g) any other materials that violate state or federal laws pertaining to advertising or unfair, deceptive, or abusive acts or practices.

(4) When an advertisement includes information about a borrower's current loan that the licensee did not obtain from a solicitation, application, or loan, a licensee must provide the borrower with the following information, in the same size type font as the rest of the information in the advertisement:

- (a) the name of the source of the information; and
- (b) a statement that:
 - (i) this is an advertisement;
 - (ii) this is an offer for a new loan;
 - (iii) the licensee is not affiliated with the borrower's lender; and
 - (iv) this offer is not related to the consumer's existing mortgage lender or holder of the loan.

(5) A licensee shall not advertise an interest rate unless that rate is actually available at the time of the advertisement. Whenever a specific interest rate is advertised, the mortgage broker must retain a copy of the lender's rate sheet, or other supporting rate information, and the APR calculation for the advertised interest rate.

(6) Licensees are responsible for the legality, accuracy, and reliability of their advertising.

AUTH: 32-9-130, 32-9-149, MCA

IMP: 32-9-124, 32-9-149, MCA

STATEMENT OF REASONABLE NECESSITY: HB 107 includes an amendment to 32-9-149(3), MCA, which provides that the department may adopt rules to define false, deceptive, or misleading advertising. Buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. It is necessary to define false, deceptive, or misleading advertising in the interest of protecting Montana consumers from advertising that may create confusion about mortgage financing.

New Rule III(1) provides a general description of advertisements the department will consider false, misleading, or deceptive. The specified practices have been identified as misleading or deceptive by other state and federal financial services regulatory agencies. The list provides a framework to help licensees identify advertising practices considered false, misleading, or deceptive.

New Rule III(2) provides a list of problematic terms or statements that cannot be used in advertising because they are likely to mislead consumers and potentially harm consumers. Licensees cannot guarantee that they are able to offer the lowest or best rates. This is because it is impossible for licensees to know all the rates being offered by their competitors. Additionally, not all mortgage brokers or mortgage lenders publish or advertise their available interest rates. Therefore, licensees must avoid making such a representation.

Licensees cannot use the word "free" or other similar terms to imply that they are offering a no cost loan. This is problematic because the cost of credit is not only tied to the fees charged when obtaining a loan. The cost of credit is also determined by the interest rate. As an example, the interest rate can be increased to offset loan closing fees. Thus, it is misleading to say the loan is free because the borrower is paying for the loan in the form of a higher interest rate over the life of the loan.

Additionally, it is deceptive for a licensee to advertise loan terms that it knows it cannot provide. This is false advertising which makes it impossible for consumers to accurately compare loan terms among mortgage licensees. Consumers may pay higher fees if they settle on using a mortgage broker or mortgage lender that ultimately cannot deliver the loan terms it advertises.

This proposed rule also provides it is a false, deceptive, or misleading practice for licensees to make false claims in respect to their ability to obtain loans for borrowers with bad or no credit. This is critical to ensure licensees do not lure consumers with bad or no credit through advertising if they have no history of helping these consumers. A consumer may be baited into choosing a loan product with negative amortization, an increase in the principal balance of a loan which is caused when a loan product does not require a consumer to make a payment that covers the amount of interest due. This non-traditional mortgage loan product warrants the additional disclosure in advertisements to allow consumers to be better informed regarding loans with negative amortization.

New Rule III(3) describes a particular type of advertising considered false, misleading, or deceptive. Use of such advertising by segments of the mortgage industry has been criticized by consumers for creating the false appearance that the advertisement is from a governmental agency or a bank or credit union. This rule

clarifies that it is a misleading and deceptive practice for licensees to suggest they are affiliated with or represent any entity other than themselves. It specifically prohibits use of logos, images, or emblems resembling those used by government agencies. Many consumers trust local, state, and federal governments and depository financial institutions such as banks or credit unions where they maintain accounts. It is unfair for a licensee to deceive a consumer and prey upon this trust when it misrepresents itself in that context.

New Rule III(4) addresses advertising which contains information about a consumer's current mortgage loan when a licensee has not obtained that loan information directly from the consumer. The provisions of this section require the licensee to disclose their source of information and explain that their solicitation is for a new loan not from the consumer's lender. It is common for lenders to glean publicly available documents such as mortgage deeds to help generate potential leads for new mortgage loans. This affords greater transparency to consumers about which licensees are soliciting their business and allows them to make informed decisions about the persons offering them financing.

New Rule III(5) is necessary to ensure licensees do not engage in bait and switch tactics pertaining to interest rates since rates are a primary consideration when consumers are shopping for a mortgage. It is reasonable to require licensees to maintain supporting documentation to demonstrate that an interest rate was available in the event of an examination or enforcement action.

New Rule III(6) reinforces that licensees are accountable for the content in their advertising. This provision is necessary, so licensees do not shift blame for false, deceptive, or misleading advertising to employees or a third-party vendor.

NEW RULE IV INTERNET OR ELECTRONIC ADVERTISING (1) For the purpose of this rule, "Internet" means the Internet, the World Wide Web, or Internet-based electronic information distribution networks, and any derivative delivery systems or evolutions of such delivery systems that may be connected to individual computers, terminals, and other consumer electronic interface devices through which information is delivered via computer servers connected via phone lines or other cable, wire, fiber, wireless, or other analogous linkages to a computer, computer network or networks including, but not limited to, websites, e-mail, text messaging, multimedia advertising, social media, and/or banner advertisements.

(2) Licensees who engage in any form of Internet or electronic advertising shall comply with the requirements of this rule. This rule does not apply to traditional forms of advertising or promotion, such as newspaper, television, or radio advertisements, or direct mailings.

(3) A licensee must provide the following in any Internet or electronic advertising:

(a) the licensee's name as entered into NMLS and NMLS unique identifier; and

(b) if loan originators are named, their NMLS unique identifier must closely follow the names.

(4) A licensee must provide a link to their own NMLS Consumer Access webpage on any of its websites.

(5) If a loan originator maintains a separate website used in any way for or related to mortgage origination activity, the sponsoring licensee's name and NMLS unique identifier must appear on the website.

(6) All web addresses used by licensees must be disclosed by the entity in their NMLS record.

(7) Internet or electronic advertising content used to solicit Montana consumers must comply with all relevant Montana state and federal statutes for specific services and products advertised.

AUTH: 32-9-149, MCA

IMP: 32-9-124, 32-9-149, MCA

STATEMENT OF REASONABLE NECESSITY: HB 107 amended 32-9-149(5), MCA, which provides that the department may adopt rules to establish requirements for licensee advertising using the Internet or any electronic format. Buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. The Internet is playing a larger role in the mortgage profession. This rule is necessary to establish requirements for the mortgage industry when it communicates to consumers in advertising through the Internet or any electronic format. It is critical that these forms of advertising are fully transparent, so consumers know who is soliciting their business.

New Rule IV(1) provides a definition of "Internet" in order to clarify forms of electronic advertising subject to this rule. New Rule IV(2) specifies that this rule only applies to Internet or electronic advertising and is not applicable to more traditional forms of advertising listed.

New Rule IV(3) sets forth requirements that will enable consumers to more easily identify the individuals and businesses they are doing business with when shopping for mortgages online. The inclusion of a licensee's entity or individual name and license number in online advertising enables consumers to be better informed about who is soliciting their business.

New Rule IV(4) requires licensees to add a link to a licensee's NMLS Consumer Access webpage on any of their websites. The NMLS Consumer Access portal allows consumers to verify licensees' contact information, license status, and whether public enforcement actions exist. Linking to the NMLS portal promotes transparency to consumers and awareness of the tool. This is also a requirement that has been adopted by and is consistent with other state mortgage regulators' requirements.

New Rule IV(5) is proposed to ensure that mortgage loan originators are held to the same standard as entities in respect to website requirements. Additionally, it requires the mortgage loan originator to include their sponsoring entity's name and NMLS unique identifier. The rule is necessary because some mortgage loan originators market their own websites and it is important for consumers to be able to identify who is soliciting their business.

New Rule IV(6) is necessary to ensure the department can identify websites used by licensees. These websites should identify who is responsible for their content. However, if it is not clear who is responsible for the content, the information contained on the NMLS provides an additional means for the department to verify

who is operating a website. This is important if the department needs to contact a licensee with concerns related to website content.

New Rule IV(7) clarifies that a licensee's Internet or electronic advertising must comply with state and federal statutes when licensees are promoting products and services.

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., December 9, 2019.

6. If persons who are directly affected by the proposed action[s] wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., November 25, 2019.

7. If the Division of Banking and Financial Institutions 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 318 persons based on the 3,180 existing mortgage loan originator, mortgage broker, mortgage lender, and mortgage servicer licensees.

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 Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Heather Hardman, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the

office at (406) 841-2930; e-mailed to banking@mt.gov; 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, apply and have been fulfilled. The primary bill sponsor, Representative Shane Morigeau, was contacted by mail on June 7, 2019.

11. The department has determined that under 2-4-111, MCA, the proposed adoption of the above-stated rules will not significantly and directly impact small businesses.

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 October 29, 2019.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I and II pertaining to the) PROPOSED ADOPTION
administration of the Montana Historic)
Preservation Grant (MHPG) Program)

TO: All Concerned Persons

1. On December 2, 2019, at 11:00 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, in Helena, Montana, or by conference call 1-877-273-4202, conference room 7865396, to consider the proposed adoption of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., November 29, 2019, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov.

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

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE
SUBMISSION AND REVIEW OF APPLICATIONS FOR THE MONTANA HISTORIC
PRESERVATION GRANT PROGRAM (1) The Department of Commerce adopts
and incorporates by reference the Montana Historic Preservation Grant Program
2020 Application and Guidelines for the 2023 Biennium.

(2) The rules incorporated by reference in (1) relate to the following:

- (a) eligible applicants and projects;
- (b) types of grants available under MHPG;
- (c) general requirements for applying for MHPG grants;
- (d) application review process; and
- (e) administrative procedures and requirements.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the web site at <https://comdev.mt.gov/Programs-and-Boards/Montana-Historic-Preservation-Grant>.

AUTH: Ch. 459, Sec. 6, L. 2019

IMP: Ch. 459, Sec. 6, L. 2019

NEW RULE II INCORPORATION BY REFERENCE OF RULES FOR THE
ADMINISTRATION OF THE MONTANA HISTORIC PRESERVATION GRANT

PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Historic Preservation Grant Program Project Administration Manual.

(2) The rules incorporated by reference in (1) relate to the following:

- (a) project start-up requirements;
- (b) environmental requirements;
- (c) procurement requirements;
- (d) financial management;
- (e) protection of civil rights;
- (f) labor requirements;
- (g) project management;
- (h) involving the public;
- (i) project monitoring; and
- (j) project closeout.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the web site at <https://comdev.mt.gov/Programs-and-Boards/Montana-Historic-Preservation-Grant>.

AUTH: Ch. 459, Sec. 6, L. 2019

IMP: Ch. 459, Sec. 6, L. 2019

REASON: The proposed rules are necessary to implement and administer the Montana Historic Preservation Grant Program as required by SB 338 of the 2019 Legislative Session.

4. The effective date for the proposed rules will be January 1, 2020.

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 the Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministraiverules@mt.gov, and must be received no later than 5:00 p.m., December 6, 2019.

6. The Office of Legal Affairs, Department of Commerce, 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 listed in 2 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, Senator Terry Gauthier, was contacted on October 29, 2019 by e-mail at mrmac570@me.com.

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/ Amy Barnes

Amy Barnes
Rule Reviewer

/s/ Tara Rice

Tara Rice
Director
Department of Commerce

Certified to the Secretary of State October 29, 2019.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through IX pertaining to the) PROPOSED ADOPTION
Montana Economic Development)
Industry Advancement Act (MEDIA))

TO: All Concerned Persons

1. On December 2, 2019, at 10:00 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, in Helena, Montana, or by conference call 1-877-273-4202, conference room 7865396, to consider the proposed adoption of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., November 29, 2019, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov.

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

NEW RULE I DEFINITIONS When used in these rules, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Affiliate" means a subsidiary of which more than 50% of the voting stock is owned directly by the parent corporation or another member of the Montana combined group.

(2) "Base investment" means the amount expended by a production company as production expenditures and compensation incurred in this state that are directly used in a state-certified production.

(3) "Compensation" means Montana wages, salaries, commissions, payments to a loan-out company subject to the provisions of (b), union benefits, fringe benefits, and any other form of remuneration paid to employees for personal services performed in this state.

(a) The term does not include compensation paid that is less than the minimum wage described in 39-3-409, MCA.

(b) The term includes payments to a loan-out company by a production company if the production company withheld and remitted Montana income tax at the rate of 6.9% on all payments to the loan-out company for services performed in this state. The amount withheld is considered to have been withheld by the loan-out company on wages paid to its employees for services performed in this state. The amounts withheld must be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in

Montana. For purposes of this chapter, loan-out company nonresident employees performing services in this state must be considered taxable nonresidents and the loan-out company is subject to income taxation in the tax year in which the loan-out company's employees perform services in this state, notwithstanding any other provisions of Title 15, MCA. The withholding liability is subject to penalties and interest as provided in 15-1-216, MCA.

(c) With respect to a single crew member or production staff member, excluding an actor, director, producer, or writer, the portion of any compensation that exceeds \$500,000 for a single production is not included when calculating the base investment.

(d) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest are considered as having been paid to the employee and must be aggregated regardless of the means of payment or distribution.

(4) "Game platform" means the electronic delivery system used to launch or play an interactive game.

(5) "Game sequel" means an interactive game that builds on the theme of a previously released interactive game, is distinguished by a new title, and features objectives or characters that are recognizably different from those in the original game.

(6) "Loan-out company" means a personal service company contracted with and retained by a production company to provide individual personnel who are not employees of the production company, including actors, directors, producers, writers, production designers, production managers, costume designers, directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt coordinators, and similar personnel, for performance of services used directly in a qualified production activity.

(a) The term does not include persons retained by a production company to provide tangible property or outside independent contractor services, such as catering, construction, trailers, equipment, and transportation.

(7) "Multimarket commercial distribution" means paid commercial distribution that extends to markets outside the state.

(8) "Postproduction company":

(a) means a company that:

(i) maintains a business location physically located in this state;

(ii) is engaged in qualified postproduction activities;

(iii) meets the requirements of 15-31-1005(4), MCA, in the tax year for which the postproduction company claims the tax credit provided for in 15-31-1009, MCA; and

(iv) has been approved by the department of commerce to claim the credit provided for in 15-31-1009, MCA.

(b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a tax obligation of the state, a loan made by the state, or a loan guaranteed by the state.

(9) "Prereleased interactive game" means a new game, the offering of an existing game on a new game platform, or a game sequel that is in the developmental stages of production and that may be available to individuals for

testing purposes but is not generally made available or distributed to consumers or to the general public.

(10) "Principal photography" means the time period the fundamental component of the project is materialized in Montana.

(11) "Production company" means a company primarily engaged in qualified production activities that have been approved by the department of commerce.

(a) The term does not include any form of business owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a tax obligation of the state, a loan made by the state, or a loan guaranteed by the state.

(12) "Production expenditure":

(a) means a preproduction or production expenditure incurred in Montana that is directly used for a qualified production activity including:

- (i) set construction and operation;
- (ii) wardrobes, makeup, accessories, and related services;
- (iii) costs associated with photography and sound synchronization expenditures, excluding license fees, incurred with Montana companies for sound recordings and musical compositions, lighting, or related services and materials;
- (iv) editing and related services;
- (v) rental of facilities and equipment;
- (vi) leasing of vehicles, whether to be photographed or to transport people, equipment, or materials;
- (vii) lodging costs, including hotel rooms and private housing rentals paid for by the production company;
- (viii) per diem and living allowance paid to staff, cast, and crew members;
- (ix) digital, film, or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, visual effects services, and animation services;
- (x) airfare, if purchased through a Montana travel agency or travel company;
- (xi) insurance costs and bonding, if purchased through a Montana insurance agency; and
- (xii) other direct costs of producing the project in accordance with generally accepted entertainment industry practices and generally accepted accounting principles.

(b) The term does not include:

- (i) compensation, which qualifies for the credit provided for in 15-31-1007(3)(b)(i) through (3)(b)(iv), MCA;
- (ii) production expenditures for footage shot outside the state;
- (iii) marketing;
- (iv) story rights;
- (v) distribution; or
- (vi) postproduction expenditures.

(13) "Qualified Montana promotion" means a promotion of this state approved by the Department of Commerce and consisting of:

- (a) a qualified movie production that includes a 5-second static or animated logo that promotes Montana in the end credits for the life of the project and that includes a link to the official state of Montana website on the project's website;

- (b) a qualified television production that includes an embedded 5-second Montana promotion during each broadcast worldwide for the life of the project and that includes a link to the official state of Montana website on the project's website;
- (c) a qualified music video that includes the Montana logo at the end of each video and within online promotions;
- (d) a qualified interactive game that includes a 15-second Montana advertisement in units sold and embedded in online promotions; or
- (e) a qualified television special or sports event for which the network provides complimentary placement of two 30-second spots per 30 minutes of qualifying television special or sports event programming promoting Montana destinations and provided by the Department of Commerce as provided for in 15-31-1004(7), MCA.

(14) "Qualified postproduction activity" means an activity performed in this state on a qualified production employing traditional, emerging, and new workflow techniques used in postproduction for picture, sound, and music editing, rerecording and mixing, visual effects, graphic design, original scoring, animation, musical composition, and other activities performed after initial production and including activities performed on previously produced and edited content.

(15) "Qualified postproduction wage" means wages incurred in this state directly in qualified postproduction activities for footage shot inside or outside this state.

(16) "Qualified production" means a new film, video, or digital project including only feature films, series for theaters, television, or streaming, pilots, movies and scripted shows made for television or streaming, televised commercial advertisements, music videos, corporate videos, industrial films, production for website creation, television specials, sports events, video games, interactive entertainment, prereleased interactive games, and sound recording projects used in a feature film, series, pilot, or movie for television.

(a) The term includes projects shot, recorded, or originally created in short or long form, animation, and music, fixed on a delivery system, including film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced and which is intended for multimarket commercial distribution via a theater, video on demand, digital or fiber optic distribution platforms, digital video recording, a digital platform designed for distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser-supported sites, cable television stations, streaming services, or public broadcasting stations.

(b) The term does not include the coverage of news, local interest programming, instructional videos, commercials distributed only on the internet, infomercials, solicitation-based productions, nonscripted television programs, feature films consisting primarily of stock footage not originally recorded in Montana, or projects containing obscenity as defined in 45-8-201(2), MCA.

(17) "Qualified production activity" means the production of a new film, video, or digital project in this state and approved by the Department of Commerce, including only feature films, series for theaters, television, or streaming, pilots, movies and scripted shows made for television or streaming, televised commercial advertisements, music videos, corporate videos, industrial films, production for

website creation, television specials, sports events, video games, interactive entertainment, prereleased interactive games, and sound recording projects used in a feature film, series, pilot, or movie for television.

(a) The term includes the production of projects filmed or recorded in this state, in whole or in part and in short or long form, animation and music, fixed on a delivery system, including film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced and which is intended for multimarket commercial distribution via a theater, video on demand, digital or fiber optic distribution platforms, digital video recording, a digital platform designed for distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser-supported sites, cable television stations, streaming services, or public broadcasting stations.

(b) The term does not include the coverage of news, local interest programming, instructional videos, commercials distributed only on the internet, infomercials, solicitation-based productions, nonscripted television programs, or feature films consisting primarily of stock footage not originally recorded in Montana, projects containing obscenity as defined in 45-8-201(2), MCA, or projects not shot, recorded, or originally created in Montana.

(18) "Resident" has the meaning provided in 15-30-2101, MCA.

(19) "State-certified production" means a production engaged in qualified production activities and certified by the department of commerce as provided in 15-31-1004, MCA.

(20) "Underserved area" means a county in this state in which 14% or more people of all ages are in poverty as determined by the U.S. Census Bureau estimates for the most current year available.

AUTH: Ch. 352, Sec. 12, L. 2019

IMP: Ch. 352, Sec. 12, L. 2019

REASON: The proposed rule is necessary for the Department of Commerce to implement procedures and administer the Montana Economic Development Industry Advancement Act (MEDIA) as required by HB 293 of the 2019 Legislative session Ch. 352, Sec. 12.

NEW RULE II APPLICATION FOR STATE CERTIFICATION OF PRODUCTION (1) A production company begins the state certification process by submitting the following information on an application form provided by the Montana Film Office:

(a) Production company's name, primary business address, telephone and fax numbers, incorporation information, federal tax identification number, and the name of at least one principal company officer or manager;

(b) Address and telephone and fax numbers of the production company's Montana office or Montana registered agent;

(c) Name of the line producer, unit production manager, or production accountant;

(d) Statement that the applicant meets the definition of production company;

(e) Title of production;

- (f) Type of production;
 - (g) Proposed dates of production from preproduction, to start, to completion of principal photography;
 - (h) Copy of synopsis or production script;
 - (i) List of production locations;
 - (j) Statement production does not contain obscene material;
 - (k) Statement production will include Montana promotion;
 - (l) Statement regarding minimum base investment; and
 - (m) Any other information requested by the Montana Film Office.
- (2) A production application is complete when all of the information requested on the application form has been provided to the Montana Film Office by the production company, all follow-up information requested by the Montana Film Office has been provided by the production company, the application form has been signed by the manager, agent, president, vice president, or other person authorized to represent the production company, and a \$500 application fee has been received by the Montana Film Office.
- (3) A complete production application must be submitted by the production company before the start of principal photography.

AUTH: Ch. 352, Sec. 12, L. 2019

IMP: Ch. 352, Sec. 12, L. 2019

REASON: The proposed rule is necessary for the Department of Commerce to implement procedures and administer the Montana Economic Development Industry Advancement Act (MEDIA) as required by HB 293 of the 2019 Legislative session Ch. 352, Sec. 12.

NEW RULE III STATE CERTIFICATION OF PRODUCTION (1) The Montana Film Office, after review of a complete application, shall provide written notification to the production company applicant as to whether the production qualifies as a state-certified production within 30 days of receiving a complete application.

(2) Written notification that the production qualifies as a state-certified production shall include a certification number.

(3) Written notification that the production fails to qualify as a state-certified production shall include a summary explaining why the production failed to qualify as a state-certified production.

(4) If the production fails to qualify as a state-certified production, the production company may modify and resubmit its application within 30 days of the date of the initial written notification of the failure.

(5) A modified application submitted beyond 30 days of the date of the initial written notification of the failure will be considered a new application and must be accompanied with a \$500 application fee.

AUTH: Ch. 352, Sec. 12, L. 2019

IMP: Ch. 352, Sec. 12, L. 2019

REASON: The proposed rule is necessary for the Department of Commerce to implement procedures and administer the Montana Economic Development Industry Advancement Act (MEDIA) as required by HB 293 of the 2019 Legislative session Ch. 352, Sec. 12.

NEW RULE IV APPLICATION FOR STATE CERTIFICATION OF PRODUCTION WITH BASE INVESTMENT OF LESS THAN \$350,000 BUT GREATER THAN \$50,000

(1) In addition to the information submitted pursuant to [NEW RULE II], Application for State Certification of Production, a production company submitting an application for production with a base investment of less than \$350,000 but greater than \$50,000, shall submit the following:

(a) Professional qualifications of key crew members, such as producer, director, writer, director of photography, cast, and financial or distribution partners; and

(b) Qualifications and experience of production company in relation to the proposed production.

AUTH: Ch. 352, Sec. 12, L. 2019

IMP: Ch. 352, Sec. 12, L. 2019

REASON: The proposed rule is necessary for the Department of Commerce to implement procedures and administer the Montana Economic Development Industry Advancement Act (MEDIA) as required by HB 293 of the 2019 Legislative session Ch. 352, Sec. 12.

NEW RULE V STATE CERTIFICATION OF PRODUCTION WITH BASE INVESTMENT OF LESS THAN \$350,000 BUT GREATER THAN \$50,000

(1) The Montana Film Office may approve on a case-by-case basis an application for a commercial, music video, production for website creation, video game, interactive entertainment, or experimental or low-budget project that plans a base investment of less than \$350,000 but more than \$50,000.

(2) The Montana Film Office, after review of a complete application, shall provide written notification to the production company applicant as to whether the production qualifies as a state-certified production within 30 days of receiving a complete application.

(3) Written notification that the production qualifies as a state-certified production shall include a certification number.

(4) Written notification that the production fails to qualify as a state-certified production shall include a summary explaining why the production failed to qualify as a state-certified production.

(5) If the production fails to qualify as a state-certified production, the production company may modify and resubmit its application within 30 days of the date of the initial written notification of the failure.

(6) A modified application submitted beyond 30 days of the date of the initial written notification of the failure will be considered a new application and must be accompanied with a \$500 application fee.

(7) Written notification that the production met the requisite qualifications but was not selected for approval by the Montana Film Office as a state-certified production shall include a summary explaining why the production was not selected for approval by the Montana Film Office as a state-certified production.

AUTH: Ch. 352, Sec. 12, L. 2019

IMP: Ch. 352, Sec. 12, L. 2019

REASON: The proposed rule is necessary for the Department of Commerce to implement procedures and administer the Montana Economic Development Industry Advancement Act (MEDIA) as required by HB 293 of the 2019 Legislative session Ch. 352, Sec. 12.

NEW RULE VI STATE CERTIFIED PRODUCTIONS ELIGIBLE TO USE THE MONTANA SCREEN CREDIT (1) A production company may include the Montana screen credit provided by the Montana Film Office in a state-certified production provided the production company submits a written request to include the Montana screen credit in a state-certified production and the Montana Film Office approves the request in writing.

(2) The Montana Film Office may approve or deny a request to include the Montana screen credit for any reason.

AUTH: Ch. 352, Sec. 12, L. 2019

IMP: Ch. 352, Sec. 12, L. 2019

REASON: The proposed rule is necessary for the Department of Commerce to implement procedures and administer the Montana Economic Development Industry Advancement Act (MEDIA) as required by HB 293 of the 2019 Legislative session Ch. 352, Sec. 12.

NEW RULE VII REVOCATION OF STATE CERTIFICATION (1) If the Montana Film Office determines that a production company has violated its statement that the proposed production does not contain any material or performance that would be considered obscene under 45-8-201(2), MCA, or violated its statement that the production will include a qualified Montana promotion, the Montana Film Office may revoke the state certification of the production.

(2) Prior to revoking the state certification of the production, the Montana Film Office shall provide written notification to the production company of the Montana Film Office's determination.

(3) The production company and the Montana Film Office have 30 days from the date of the written notification to resolve the determination informally.

(4) If the determination is not resolved within the 30-day period or the production elects in writing not to participate in informal resolution, and the Montana Film Office provides written notification the state certification is revoked, the production company has the right to a hearing before the Department of Commerce on the revocation of the state certification as provided in Title 2, chapter 4, part 6, MCA.

AUTH: Ch. 352, Sec. 12, L. 2019
IMP: Ch. 352, Sec. 12, L. 2019

REASON: The proposed rule is necessary for the Department of Commerce to implement procedures and administer the Montana Economic Development Industry Advancement Act (MEDIA) as required by HB 293 of the 2019 Legislative session Ch. 352, Sec. 12.

NEW RULE VIII APPLICATION FOR STATE CERTIFICATION OF POSTPRODUCTION COMPANY (1) A postproduction company begins the state certification process by submitting the following information on an application form provided by the Montana Film Office:

(a) Postproduction company's name, primary business address, telephone and fax numbers, incorporation information, federal tax identification number, and the name of at least one principal company officer or manager; and

(b) Estimate of the credit postproduction company will claim.

(2) An application must be submitted in the year in which the postproduction company plans to claim the credit.

(a) A postproduction company claiming the credit multiple years shall submit an application each year the postproduction company claims the credit.

(b) The \$500 application fee is only required the initial year a postproduction company submits an application.

(3) A postproduction application is complete when all of the information requested on the application form has been provided to the Montana Film Office by the postproduction company, all follow-up information requested by the Montana Film Office has been provided by the postproduction company, the application form has been signed by the manager, agent, president, vice president, or other person authorized to represent the postproduction company, and a \$500 application fee has been received by the Montana Film Office.

AUTH: Ch. 352, Sec. 12, L. 2019
IMP: Ch. 352, Sec. 12, L. 2019

REASON: The proposed rule is necessary for the Department of Commerce to implement procedures and administer the Montana Economic Development Industry Advancement Act (MEDIA) as required by HB 293 of the 2019 Legislative session Ch. 352, Sec. 12.

NEW RULE IX STATE CERTIFICATION OF POSTPRODUCTION COMPANY (1) The Montana Film Office, after review of a complete application, shall provide written notification to the postproduction company applicant as to whether the postproduction company qualifies for the tax credit for postproduction wages within 30 days of receiving a complete application.

(2) Written notification that the postproduction company fails to qualify for the tax credit for postproduction wages shall include a summary explaining why the postproduction failed to qualify for the tax credit for postproduction wages.

(3) If the postproduction company fails to qualify for the tax credit for postproduction wages, the postproduction company may modify and resubmit its application within 30 days of the date of the initial written notification of the failure.

(4) A modified application submitted beyond 30 days of the date of the initial written notification of the failure will be considered a new application and must be accompanied with a \$500 application fee.

AUTH: Ch. 352, Sec. 12, L. 2019

IMP: Ch. 352, Sec. 12, L. 2019

REASON: The proposed rule is necessary for the Department of Commerce to implement procedures and administer the Montana Economic Development Industry Advancement Act (MEDIA) as required by HB 293 of the 2019 Legislative session Ch. 352, Sec. 12.

FISCAL IMPACT: The fee estimate requirements of 2-4-302(1)(c), MCA, cannot be determined at this time. The number of applicants and requests for certifications from production companies is currently unknown to the department.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministraiverules@mt.gov, and must be received no later than 5:00 p.m., December 6, 2019.

5. The Office of Legal Affairs, Department of Commerce, has been designated to preside over and conduct this hearing.

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

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Wylie Galt, was contacted on October 21, 2019 by e-mail at wyliegaltformt@gmail.com.

8. 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/ Garrett R. Norcott

Garrett R. Norcott
Rule Reviewer

/s/ Tara Rice

Tara Rice
Director
Department of Commerce

Certified to the Secretary of State October 29, 2019.

BEFORE THE PUBLIC SAFETY OFFICERS
STANDARDS AND TRAINING COUNCIL
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 23.13.102, 23.13.206,) PROPOSED AMENDMENT
23.13.207, 23.13.208, 23.13.209,)
23.13.210, 23.13.212, 23.13.215,)
23.13.702, and 23.13.703 pertaining)
to the certification of public safety)
officers)

TO: All Concerned Persons

1. On December 18, 2019, at 10:00 a.m., the Public Safety Officers Standards and Training (POST) Council will hold a public hearing in Rooms 213 and 214 of the Karl Ohs Building of the Montana Law Enforcement Academy, 2260 Sierra Road East, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The POST Council 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 POST Council no later than 4:00 p.m. on December 11, 2019, to advise us of the nature of the accommodation that you need. Please contact Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov.

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

23.13.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) through (5) remain the same.

(6) "Director" or "executive director" means the ~~executive director~~ bureau chief of the public safety officer standards and training ~~council~~ bureau.

(7) through (13) remain the same.

(14) "Misdemeanor probation/pretrial services officer" means a public safety officer who regularly performs the following functions as part of their work assignment:

(a) gathers information about pretrial defendants or misdemeanants through interviews and records checks;

(b) reports information regarding pretrial defendants or misdemeanants to a judge so the judge can determine the propriety of pretrial supervision, detainment, or sentence revocation;

(c) monitors pretrial defendants' or misdemeanants' compliance with court-ordered pretrial release or misdemeanor probation conditions;

(d) provides information and resources to pretrial defendants or misdemeanants to help prevent violations of court-ordered conditions; and
(e) reports violations of court-ordered conditions to the court.
(14) through (26) remain the same but are renumbered (15) through (27).

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: The 2019 Legislature enacted HB 684, which created a Public Safety Officer Standards and Training Bureau under the Department of Justice and provided for a "bureau chief" rather than an "executive director." This amendment is necessary to reflect the statutory change.

On October 2, 2019, the POST Council created a new discipline, misdemeanor probation/pretrial services officer. This amendment is necessary to define the new discipline. Historically, the Department of Corrections provided a Probation and Parole basic training, which POST required misdemeanor probation and pretrial services officers to attend. The Department of Corrections recently informed POST that it will no longer provide this training to any non-Department of Corrections employees. POST therefore created this discipline to provide misdemeanor probation and pretrial services officers with training relevant to their duties.

23.13.206 REQUIREMENTS FOR THE BASIC CERTIFICATE (1) through (1)(c) remain the same.

(d) misdemeanor probation/pretrial services officer;

(d) through (f) remain the same but are renumbered (e) through (g).

(2) remains the same.

(3) An officer meeting the qualifications outlined above will be issued a basic POST certificate. The discipline of the basic POST certificate will correspond to the basic training course the officer attended. POST will consider the completion of the above requirements to constitute the officers application for a POST basic certificate. However, if an officer wishes to fill out an application form, then POST will also consider that application. POST will not reissue a basic certificate merely to change the discipline listed.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: On October 2, 2019, the POST Council created a new discipline, misdemeanor probation/pretrial services officer. The amendment to ARM 23.13.206(1)(d) is necessary to ensure that the existing requirements for the award of a basic certification apply to the new discipline.

In 2017, this rule was amended to identify the disciplines in which POST would issue a basic certificate. However, that amendment did not address how POST would handle certificates issued before 2017 that did not fall under one of the listed disciplines. Some officers have requested that POST reissue their certificates to

align with one of the listed disciplines, even though their basic training was not in the listed discipline. This amendment to ARM 23.13.206(3) is necessary to clarify that the discipline listed on a POST basic certificate corresponds to the basic training course the officer attended. This practice helps ensure that POST's internal tracking of trainings attended and certificates issued remains consistent. This amendment is also necessary in light of the creation of the new discipline, misdemeanor probation/pretrial services officer. The amendment notifies misdemeanor probation/pretrial services officers who attended a Probation and Parole basic training under the Department of Corrections that POST will not reissue their certificates merely to change the discipline from probation/parole officer to misdemeanor probation/pretrial services officer.

23.13.207 REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER INTERMEDIATE CERTIFICATE (1) through (1)(c) remain the same.

(d) misdemeanor probation/pretrial services officer;

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

(2) remains the same.

(3) In addition to ARM 23.13.204 and 23.13.205, a detention/corrections officer or a misdemeanor probation/pretrial services officer who is an applicant for an award of the intermediate certificate:

(a) through (5) remain the same.

(6) A misdemeanor probation/pretrial services officer who possessed a probation and parole basic certificate before [effective date of this rule] meets the requirement of (3)(b).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: Before the POST Council created the misdemeanor probation/pretrial services officer discipline, POST required officers serving the function of a misdemeanor probation officer and/or a pretrial services officer to attend the Department of Corrections' Probation and Parole basic academy. Due to this practice, a number of officers who have been working in misdemeanor probation/pretrial services have Probation and Parole certifications. These amendments are necessary to allow these officers to qualify for the misdemeanor probation/pretrial services officer certification without attending a basic academy again.

23.13.208 REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADVANCED CERTIFICATE (1) through (1)(b) remain the same.

(c) probation and parole officer; ~~and~~

(d) misdemeanor probation/pretrial services officer; and

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

(2) remains the same.

(3) In addition to ARM 23.13.204 and 23.13.205, a detention/corrections officer or a misdemeanor probation/pretrial services officer who is an applicant for an award of the advanced certificate:

(a) through (5) remain the same.

(6) A misdemeanor probation/pretrial services officer who possessed a probation and parole intermediate certificate before [effective date of this rule] meets the requirement of (3)(a).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: See the Reasons under ARM 23.13.207.

23.13.209 REQUIREMENTS FOR PUBLIC SAFETY OFFICER SUPERVISORY CERTIFICATE (1) through (1)(b) remain the same.

(c) probation and parole officer; and

(d) misdemeanor probation/pretrial services officer; and

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

(2) through (4) remain the same.

(5) A misdemeanor probation/pretrial services officer who possessed a probation and parole intermediate certificate before [effective date of this rule] meets the requirement of (2)(a).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: See the Reasons under ARM 23.13.207.

23.13.210 REQUIREMENTS FOR PUBLIC SAFETY OFFICER COMMAND CERTIFICATE (1) through (1)(b) remain the same.

(c) probation and parole officer; and

(d) misdemeanor probation/pretrial services officer; and

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

(2) through (3) remain the same.

(4) A misdemeanor probation/pretrial services officer who possessed a probation and parole supervisory certificate before [effective date of this rule] meets the requirement of (2)(a).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: See the Reasons under ARM 23.13.207.

23.13.212 INSTRUCTOR CERTIFICATION REQUIREMENTS (1) through (6) remain the same.

(7) A misdemeanor probation/pretrial services officer who possessed a probation and parole basic certificate before [effective date of this rule] meets the requirement of (3)(b).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: See the Reasons under ARM 23.13.207.

23.13.215 FIREARMS PROFICIENCY STANDARDS (1) through (4) remain the same.

(5) Before carrying a firearm or making an arrest, a misdemeanor probation/pretrial services officer must successfully complete the firearms proficiency requirements provided in this rule. The officer must successfully complete the firearms proficiency requirements provided in this rule at least once a year.

AUTH: 2-15-2029, MCA

IMP: 7-32-303, 44-4-403, MCA

REASON: The 2019 Legislature amended 46-23-1005, MCA, to provide arrest authority to publicly employed misdemeanor probation officers. Similarly, 46-9-505, MCA, provides arrest authority for all pretrial services officers. On October 2, 2019, the POST Council created a new discipline, misdemeanor probation/pretrial services officer. This amendment is necessary to ensure that officers in the new discipline receive training before making arrests and carrying firearms. The council recognizes that many misdemeanor probation or pretrial services agencies are relatively new and small and do not have the resources to provide field training on arrest and use of force. This amendment ensures the safety of the misdemeanor probation/pretrial services officers and of the public by requiring all misdemeanor probation/pretrial services officers to be firearms proficient, without requiring the agencies to provide field training.

23.13.702 GROUNDS FOR DENIAL, SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) remains the same.

(2) The public safety officer's employing authority must report to the executive director any potential ground for denial, sanction, suspension, or revocation of POST certification as enumerated in (3).

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

(e) conviction of a misdemeanor or felony, or an offense which would be a misdemeanor or felony if committed in this state;

(f) remains the same.

(g) neglect of duty or willful violation of orders or policies, procedures, rules, or regulations, or criminal law when such action or inaction, committed in the officer's capacity as an officer or otherwise, reflects adversely on the officer's honesty, integrity, or fitness as an officer or is prejudicial to the administration of justice;

(h) remains the same.

(i) ~~other conduct or a pattern of~~ conduct which ~~tends to significantly undermine public confidence in the profession, whether committed in the officer's capacity as an officer or otherwise, is prejudicial to the administration of justice or reflects adversely on the employing authority's integrity or the officer's honesty, integrity, or fitness as an officer;~~

(j) and (k) remain the same.

~~(l) acts that are reasonably identified or regarded as so improper or inappropriate that by their nature and in their context are harmful to the employing authority's or officer's reputations, or to the public's confidence in the profession;~~

(m) through (o) remain the same but are renumbered (l) through (n).

(3) remains the same but is renumbered (4).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: At a special council meeting in April 2019, employing authorities and public safety officers expressed concerns that the current grounds for denial, sanction, suspension, or revocation are vague and overbroad, for example because they would include an officer failing to refuel a vehicle at the end of a shift. The employing authorities also expressed ongoing confusion about what to send POST when reporting grounds for denial, sanction, suspension, or revocation. Some also expressed their belief that they are not required to report to POST at all. These amendments are necessary to clarify that an employing authority must report violations to the council and to clarify that only certain violations fall under the scope of the rule. These amendments are also necessary to ensure consistency with the public safety officers' Code of Ethics set forth in ARM 23.13.203.

23.13.703 PROCEDURE FOR MAKING AND RECEIVING ALLEGATIONS OF OFFICER MISCONDUCT AND FOR INFORMAL RESOLUTION OF THOSE ALLEGATIONS BY THE DIRECTOR (1) through (3) remain the same.

(4) Within 30 days of being notified of the allegation, or in making its own allegation of misconduct, the employing authority must give POST a notice of the employing authority's investigation, action, ruling, finding, or response to the allegation, in writing, which must include a description of any remedial or disciplinary action pending or already taken against the officer regarding the allegation in question, and a recommendation from the employing authority regarding whether POST should impose a sanction. If the employing authority recommends POST impose a sanction, the employing authority must state what sanction the employing authority deems reasonable. POST shall consider but is not bound by the recommendation of the employing authority. If available, a copy of the initial allegation made to the employing authority and the employing authority's written response must be forwarded to the director. The employing authority may make a written request to the director for additional time to respond. Such a request must provide good cause as to the reason more time is required. The director may grant or deny requests for additional time at his the director's discretion.

(5) through (5)(b)(iii) remain the same.

~~(iv) the remedy sought, including a recommendation for a denial, sanction, suspension, or revocation of the officer's POST certification;~~

(c) through (11) remain the same.

AUTH: 2-4-201, 2-15-2029, MCA

IMP: 2-4-201, 2-15-2029, 44-4-403, MCA

REASON: At a special council meeting in April 2019, employing authorities indicated that they do not make recommendations regarding sanctions because they do not believe POST would consider such recommendations. These amendments are necessary to clarify that POST will in fact consider recommendations.

In May 2019, officers expressed concern that complainants may recommend sanctions when some lesser action may be acceptable. The amendments are also necessary to allow complainants to recommend something other than a sanction, such as an apology or an investigation.

As part of the periodic review of its administrative rules, POST is proposing to substitute gender neutral terms for gender specific language. POST has determined that reasonable necessity exists to amend ARM 23.13.703(4) at this time.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov, and must be received no later than 5:00 p.m., January 3, 2020.

5. Kristina Neal, Attorney at Law, has been designated to preside over and conduct this hearing.

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

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

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

/s/ Hannah Tokerud
Hannah Tokerud
Rule Reviewer

Sheriff Tony Harbaugh
Chairman
Public Safety Officers Standards
and Training Council

-1947-

By: /s/ Perry Johnson
Perry Johnson
Executive Director

Certified to the Secretary of State October 29, 2019.

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.26.604, 24.26.612, 24.26.620,) PROPOSED AMENDMENT
24.26.655, and 24.26.667 pertaining to)
new unit determinations and elections)

TO: All Concerned Persons

1. On December 3, 2019, at 10:00 a.m., a public hearing will be held in Conference Room B of the Beck Building, 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Personnel Appeals no later than 5:00 p.m., on November 27, 2019, to advise us of the nature of the accommodation that you need. Please contact Theresa McGowan-Sroczyk, Board of Personnel Appeals, P.O. Box 201503, Helena MT 59620-1503; telephone (406) 444-1389; Montana TTD (406) 444-5549; facsimile (406) 444-4140; or TSroczyk@mt.gov.

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

24.26.604 REQUIREMENTS FOR PROOF OF INTEREST
AUTHORIZATION DOCUMENTS - CONFIDENTIALITY (1) An authorization card is proof of interest that must be submitted in support of a petition for certification. The card must contain the following:
(a) the employee's name, typed or legibly printed;
(b) the employee's signature;
(c) the date of the employee's signature, dated within six months of the date of the filing of the petition;
(d) a statement that the employee designates the named labor organization as the employee's exclusive representative for purposes of collective bargaining with the employee's employer; and
(e) if the card is submitted as proof of interest in support of a new unit determination petition for certification without an election, the card must also include a statement that the employee understands that the employee's signature may be used to obtain certification of the named labor organization as the exclusive bargaining representative without an election.
(1) remains the same but is renumbered (2).

AUTH: 39-31-104, MCA
IMP: 39-31-207, MCA

Reasonable Necessity: There is reasonable necessity to amend this rule to clarify the requirements for proof of interest documents. The amendments specify the name, signature, and date requirements. The amendments also clarify the substantive information requirements for the proof of interest as demonstrated on the authorization cards. Specifically, the cards are required to include a statement that clearly indicates the person signing the card understands the intent they are affirming by their signature. If a majority of employees in the proposed unit sign cards such that the card is used as proof of interest to form a unit without the need for an election, the card must include a statement that the person signing understands the card may be used as proof without an election. Specific language is not required, but the language must clearly indicate the substantive intent. The following language is a good example:

"I designate [name of labor organization] as the exclusive bargaining representative for the purposes of collective bargaining with [name of employer]. I understand that my signature may be used to obtain certification of the above-named labor organization as the exclusive bargaining representative, without an election.
Employee Name Employee Signature Date Signed"

24.26.612 PETITIONS FOR NEW UNIT DETERMINATION AND ELECTION

(1) A petition for new unit determination ~~and election~~ may be filed with the board by a labor organization or a group of employees.

(2) through (4) remain the same.

(5) The petition ~~shall~~ must be accompanied by proof, consisting of authorization cards, or copies thereof, ~~from 30 percent of the employees in the proposed unit, which have been individually signed and dated within six months of the date of the filing of the petition. The cards shall indicate that the signatories desire to be represented for collective bargaining purposes by the petitioner.~~

(a) The board agent shall promptly issue a certification of representative because no question of representation exists, an election is not required, and an appropriate unit has been determined, if the following requirements of this subsection are met:

(i) the number of authorization cards submitted exceed 50% of the number of employees in the proposed bargaining unit;

(ii) a counter-petition petition is not filed within ten days of the date the board mailed the petition for unit determination to the employer, as provided by ARM 24.26.614;

(iii) a petition to intervene has not been filed within ten days of the employer posting notice of unit determination proceedings, as provided by ARM 24.26.618; and

(iv) the showing of interest is adequate because more than 50% of the employees on the excelsior list have submitted an authorization card.

(b) An election is required pursuant to ARM 24.26.620 when at least 30% but not more than 50% of the employees on the excelsior list have submitted an authorization card.

(6) remains the same.

AUTH: 39-31-104, MCA
IMP: 39-31-207, MCA

Reasonable necessity: There is reasonable necessity to amend this rule to make clear that elections are not required in all proceedings for new unit determinations if a majority of employees show support for representation with authorization cards and no one files an opposing petition. In this situation, no question of representation exists and an appropriate unit has been determined by the adequacy of the showing of interest on valid authorization cards. This rule provides a way to save time and resources for unit determinations by avoiding unnecessary procedures when employees have indicated an intent to seek a representative for collective bargaining. The proposed rule properly protects employees' right to self-organize, by streamlining the proceeding when no opposing petitions are filed. The rule applies when:

1. a majority of employees submit proper proof of interest that indicates their desire to be represented for collective bargaining purposes without an election;
2. the employer posts the notice of unit determination proceedings as required by ARM 24.26.616;
3. the employer does not file a counter petition;
4. another union does not file a petition to intervene;
5. another group of employees does not file a petition to intervene; and
6. the showing of interest is adequate based on the excelsior list provided for by ARM 24.26.620.

Because the procedure in (5)(a) only applies to new unit determinations, only unrepresented employees may submit proof of interest authorization cards.

24.26.620 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION (1) If an election is required by ARM 24.26.612, the ~~The~~ board shall direct an investigation of all questions and facts concerning the proposed unit, and shall have the following options:

- (a) and (b) remain the same.
- (2) The excelsior list must be provided to the petitioner within ten days of the board's mailing of the petition to the public employer ~~posting of notice of the unit determination proceedings.~~
- (3) remains the same.

AUTH: 39-31-104, MCA
IMP: 39-31-207, MCA

Reasonable Necessity: There is reasonable necessity to amend this rule to clarify that it does not apply to new unit determinations that do not require an election. There is also reasonable necessity to clarify that the timeline for the employer to provide the excelsior list to the petitioner starts from the date the board notifies the employer, not the date the employer posts the notice of unit determination proceedings. The date the employer is notified is determined and documented by

the department and should be used as the proper date to determine when information should be provided in order to streamline the proceedings.

24.26.655 ELECTION DIRECTED (1) When a petition for an election has been filed, the board shall direct an election be held, if the board or its agent has determined an appropriate unit and the provisions of ARM 24.26.612 require an election ~~has been determined or if no question of representation exists~~. The election shall be conducted under the direction and supervision of the board's agent. Determinations made by the board's agent are subject to review by the Board of Personnel Appeals at the board's discretion.

AUTH: 39-31-104, MCA

IMP: 39-31-208, MCA

Reasonable necessity: There is reasonable necessity to amend this rule to clarify that it only applies when an election is required.

24.26.667 CERTIFICATION (1) If an election occurred and no objections are filed within the time set forth above, or if the challenged ballots are insufficient in number to affect the result of the election, the board shall forthwith issue to the parties a certification of representative, where appropriate.

(2) remains the same.

AUTH: 39-31-104, MCA

IMP: 39-31-208, MCA

Reasonable necessity: There is reasonable necessity to amend this rule to clarify that it only applies when an election is required.

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 Theresa McGowan-Sroczyk, Board of Personnel Appeals, P.O. Box 201503, Helena MT 59620-1503, by facsimile to (406) 444-4140, or e-mail to TSroczyk@mt.gov, and must be received no later than 5:00 p.m., December 6, 2019.

5. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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, which includes the name

and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

8. Pursuant to 2-4-111, MCA, the department, on behalf of the board, has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

9. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

BOARD OF PERSONNEL APPEALS
ANNE L. MACINTYRE
PRESIDING OFFICER

/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 October 29, 2019.

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

In the matter of the amendment of	)	AMENDED NOTICE OF PUBLIC
ARM 24.29.1616 pertaining to the	)	HEARING AND EXTENSION OF
drug formulary in the Utilization and	)	COMMENT PERIOD ON
Treatment Guidelines for Workers'	)	PROPOSED AMENDMENT
Compensation and Occupational)	
Disease)	

TO: All Concerned Persons

1. On October 4, 2019, the Department of Labor and Industry published MAR Notice No. 24-29-348 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1719 of the 2019 Montana Administrative Register, Issue Number 19.

2. A public hearing will be held on December 6, 2019, at 10:00 a.m., in conference rooms A and B of the Beck Building, 1805 Prospect Avenue, Helena, Montana. The comment period will be extended until 5:00 p.m., December 6, 2019.

3. The rule proposed to be amended remains as proposed in the original notice.

4. 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., November 29, 2019, to advise us of the nature of the accommodation that you need. Please contact Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604; telephone (406) 444-6451; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail JSwant@mt.gov.

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 Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, MT 59604; fax (406) 444-4140; or e-mail JSwant@mt.gov, and must be received no later than 5:00 p.m., December 6, 2019.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State October 29, 2019.

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

In the matter of the adoption of New)
Rule I pertaining to positive)
identification for controlled substance)
prescriptions)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION

TO: All Concerned Persons

1. On December 6, 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 Pharmacy no later than 5:00 p.m., on November 29, 2019, to advise us of the nature of the accommodation that you need. Please contact Marcie Bough, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdpba@mt.gov (board's e-mail).

3. The proposed new rule is as follows:

NEW RULE I POSITIVE IDENTIFICATION FOR CONTROLLED
SUBSTANCE PRESCRIPTIONS (1) The board authorizes the following allowable
identifications in addition to those listed in 37-7-410, MCA:

(a) a valid government-issued photo identification, including but not limited to passport, military, or state-issued identification.

AUTH: 37-7-201, 37-7-410, MCA
IMP: 37-7-410, MCA

REASON: The 2019 Montana Legislature enacted Chapter 89, Laws of 2019 (House Bill 86), an act to generally revise prescription drug laws. The governor signed the bill March 21, 2019, and the relevant portions became effective October 1, 2019 and are codified at 37-7-410, MCA. Prior to the effective date of the legislation, numerous licensees contacted staff with concern regarding the limited forms of identification in the statute. The board determined it is reasonably necessary to adopt New Rule I to implement the bill by expanding the allowable photo identifications to include other commonly used, government-issued forms of identification.

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 Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdpba@mt.gov, and must be received no later than 5:00 p.m., December 6, 2019.

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

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

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on October 4, 2019, by telephone.

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 Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; facsimile (406) 841-2305; or to dlibsdpba@mt.gov.

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

BOARD OF PHARMACY
TONY KING, PharmD
PRESIDENT

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

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

Certified to the Secretary of State October 29, 2019.

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

In the matter of the adoption of New)
Rule I and the amendment of ARM)
37.86.2901, 37.86.2928, 37.86.2940,)
37.86.3001, and 37.87.1224,)
pertaining to inpatient and outpatient)
hospital reimbursement adjustors)

TO: All Concerned Persons

1. On December 3, 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 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 November 26, 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 OUTPATIENT HOSPITAL REIMBURSEMENT, OUTPATIENT HOSPITAL REIMBURSEMENT ADJUSTOR (1) The outpatient hospital reimbursement adjustor (HRA) payment is payable to a PPS hospital or critical access hospital, as those terms are defined in 50-5-101, MCA, that provides outpatient hospital services. Eligibility to receive the outpatient HRA is based on a hospital's year-end reimbursement status.

(2) An individual hospital's outpatient HRA payment will be based upon total hospital Medicaid outpatient charges and will be computed as follows: $HRA = (J \div D) \times P$.

(a) "HRA" represents the calculated hospital specific outpatient HRA payment.

(b) "J" equals the total outpatient hospital charges billed to Medicaid by the hospital for which the payment is calculated.

(c) "D" equals the total outpatient hospital charges billed to Medicaid by all hospitals eligible to receive an outpatient HRA payment.

(d) "P" equals the distributable revenue generated by the outpatient hospital utilization fee plus applicable federal financial participation.

(3) Data sources for the department to determine which hospitals meet the criteria to receive an outpatient HRA payment and the amount of the payment may include, but are not limited to:

- (a) the Montana Hospital Association (MHA) database;
 - (b) the Medicaid paid claims database for the most recent calendar year;
 - (c) filed or settled cost reports; and
 - (d) reports from the Licensure Bureau of the Quality Assurance Division.
- (4) Eligibility evaluations, payment calculations, and payments will be made annually.

(5) The Montana State Hospital or a hospital or facility operated by the state, a political subdivision of the state, the United States, or an Indian Tribe or any facility authorized under the Indian Health Care Improvement Act are not eligible for the HRA payment.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-113, 53-6-149, MCA

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

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS (1) through (27) remain the same.

(28) "Inpatient hospital utilization fee" means the utilization fee collected by the Department of Revenue as provided in 15-66-102, MCA.

(28) through (47) remain the same but are renumbered (29) through (48).

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, 53-6-149, MCA

37.86.2928 INPATIENT HOSPITAL REIMBURSEMENT, HOSPITAL REIMBURSEMENT ADJUSTOR (1) ~~All hospitals meeting the eligibility requirements in ARM 37.86.2940 will receive a hospital reimbursement adjustor (HRA) payment. The payment consists of two separately calculated amounts. In order to maintain access and quality in the most rural areas of Montana, critical access hospitals will receive both components of the HRA. All other hospitals will receive only Part 1, as defined in (2)(a).~~ The inpatient hospital reimbursement adjustor (HRA) payment is payable to a PPS hospital or critical access hospital, as those terms are defined in 50-5-101, MCA, that provides inpatient hospital services. Eligibility for an HRA payment will be determined based on a hospital's year-end reimbursement status.

(2) Revenue generated from the inpatient hospital utilization fee plus applicable federal financial participation (FFP) is utilized to calculate the following supplemental payments:

- (a) the continuity of care payment described in ARM 37.87.1224;
- (b) Part 1 of the HRA; and
- (c) Part 2 of the HRA.

~~(2)~~ (3) Part 1 of the HRA payment is payable to all hospitals, including critical access hospitals, as those terms are defined in 50-5-101, MCA. The payment will be based upon Medicaid inpatient utilization, and will be computed as follows:

$HRA1 = (M \div D) \times P$.

(a) For the purposes of calculating Part 1 of the HRA, the following apply:

(i) through (iii) remain the same.

(iv) "P" equals the total amount to be paid via Part 1 of the HRA. "P" consists of a state-paid amount plus the applicable federal financial participation (FFP). The portion of "P" that is paid by the state will equal the amount of revenue generated by Montana's inpatient hospital utilization fee, less all of the following:

(A) 4% of the total revenue generated by the inpatient hospital utilization fee, which will be expended as match for continuity of care adjustor payments, as provided in ARM 37.87.1224; and

(B) 8% of the total revenue generated by the inpatient hospital utilization fee, which will be expended as match for Part 2 of the HRA, as provided in ~~(3)~~ (4).

~~(3)~~ (4) Part 2 of the HRA payment is limited to critical access hospitals to maintain access and quality in the most rural areas in Montana. Part 2 will be based upon total hospital Medicaid charges, and will be computed as follows: $HRA2 = (I \div D) \times P$.

(a) For the purposes of calculating Part 2 of the HRA, the following apply:

(i) through (iii) remain the same.

(iv) "P" equals the total amount to be paid via Part 2 of the HRA. "P" will be 8% of the total revenue generated by Montana's inpatient hospital utilization fee plus applicable FFP.

~~(b)~~ (5) The numbers used in ~~(2)~~ through ~~(3)~~(a)(iv) (3) through (4) must be from the department's paid claims data for the most recent calendar year.

~~(c) For hospitals that have not been operating for two full calendar years when the HRA payments are calculated, the department may use Medicaid paid claim data from a partial or more recent 12-month period or both in order to make the calculations.~~

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.86.2940 INPATIENT HOSPITAL REIMBURSEMENT ADJUSTOR (HRA).
DATA SOURCES (1) A An inpatient hospital reimbursement adjustor (HRA) payment will be made to an eligible a Montana PPS hospital licensed pursuant to Title 50, chapter 5, MCA, as either a hospital or a critical access hospital, or critical access hospital, as those terms are defined in 50-5-101, MCA, that provides inpatient hospital services.

(2) Data sources for the department to determine which hospitals meet the criteria to receive an HRA payments, and the amount of the payments, may include, but are not limited to:

(a) through (c) remain the same.

(d) reports from the Licensing Licensure Bureau of the Quality Assurance Division.

(3) remains the same.

(4) The Montana State Hospital is or a hospital or a facility operated by the state, a political subdivision of the state, the United States, or an Indian Tribe or any facility authorized under the Indian Health Care Improvement Act are not eligible for HRA.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.86.3001 OUTPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (16) remain the same.

(17) "Outpatient hospital reimbursement adjustor (HRA)" means a payment to a Montana PPS hospital or critical access hospital as specified in [New Rule I].

(17) remains the same but is renumbered (18).

(19) "Outpatient hospital utilization fee" means the utilization fee collected by the Department of Revenue as provided in 15-66-102, MCA.

(18) remains the same but is renumbered (20).

(21) "Outpatient revenue" means the gross revenue from a hospital's charges for services provided on an outpatient basis. Charges for professional services provided as part of an outpatient treatment are not included.

(19) remains the same but is renumbered (22).

(23) "Prospective payment system (PPS) hospital" means a hospital reimbursed pursuant to the diagnosis related group (DRG) system. DRG hospitals are classified as such by the Centers for Medicare and Medicaid Services (CMS) in accordance with 42 CFR part 412.

(20) through (23) remains the same but are renumbered (24) through (27).

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.87.1224 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY (PRTF) SERVICES, CONTINUITY OF CARE PAYMENT (1) Hospital-based psychiatric residential treatment facilities as defined in ARM 37.87.1207 qualify for a continuity of care payment.

(a) remains the same.

(b) The amount will be determined by the department according to the following formula: $CCA = [M/D] * P$:

(i) through (iii) remain the same.

(iv) "P" is the total amount available for distribution via the continuity of care payments. P equals 4% of the revenue generated by the Montana inpatient hospital utilization fee, plus federal financial participation.

(2) ~~The number of Medicaid days shall be determined from the department's Medicaid paid claim data for the most recent calendar year that ended at least 12 months prior to the calculation of the continuity of care payment~~ must be from the department's paid claims data for the most recent calendar year.

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

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

The purpose of the proposed rule amendments is to:

- (1) implement House Bill 658, passed by the 2019 legislature, which requires the department to establish an outpatient hospital reimbursement adjustor (HRA) supplemental payment for PPS hospitals and critical access hospitals in Montana;
- (2) modify the exclusion criteria for the HRA supplemental payments;
- (3) update definitions for inpatient and outpatient hospitals;
- (4) update the claim data parameters for the Continuity of Care payment calculations; and
- (5) clarify the difference between Part 1 and Part 2 of the HRA payments generated from the inpatient hospital utilization fee.

NEW RULE I

House Bill (HB) 658 enacted an outpatient hospital utilization fee for hospitals to pay a percentage of the outpatient revenue. Eligible hospitals pay a 0.9% fee on hospital outpatient revenue. A portion of the revenue collected by the Department of Revenue for the outpatient utilization fee will be used to provide the state matching funds used in a new outpatient HRA payment.

New Rule I is reasonably necessary to enact the requirements of HB 658 which includes the following:

- Directing the department to distribute the new outpatient HRA payment to Montana PPS hospitals and critical access hospitals;
- Eligibility requirements for Montana PPS hospitals and critical access hospitals are defined in 50-5-101, MCA;
- Data sources used by the department to calculate and distribute the outpatient HRA payment; and
- Define facilities excluded from paying the outpatient utilization fee and from receiving HRA payments.

Inpatient and Outpatient Hospital Definitions

The department proposes to add definitions for "outpatient hospital utilization fee," "hospital reimbursement adjustor," "outpatient hospital revenue," and "inpatient hospital utilization fee." These definitions will support the proposed rules to implement the supplemental payment rules for outpatient revenue and differentiate the inpatient hospital utilization fee from the outpatient hospital utilization fee.

Continuity of Care

The department proposes to amend ARM 37.87.1224 to utilize paid claims data for the most recent calendar year, instead of the calendar year ending 12 months prior to the Continuity of Care payment calculation. The reasonable necessity for this change is to align it with the data qualifications for the HRA payments.

Clarify Inpatient Hospital Reimbursement Adjustor Payments

The department proposes to amend ARM 37.86.2928 to clarify language outlining HRA Part 1 and Part 2 of the hospital reimbursement adjustor generated from the inpatient hospital utilization fee. In addition, the rule is proposed to change the reference of hospital utilization fee to inpatient hospital utilization fee to distinguish it from the newly enacted outpatient hospital utilization fee, and remove language no longer applicable to data utilized for calculating payment for a facility not in operation for two full calendar years.

Fiscal Impact

State Fiscal Impact Year	Federal Fiscal Impact	State Fiscal Impact	Total Fiscal Impact	Providers Impacted
2020	\$102,031,979	\$16,812,299	\$118,844,278	61
2021	\$107,351,585	\$17,652,914	\$125,004,499	61

The state fiscal impact, shown above, is funded from the outpatient hospital utilization fee.

The department intends these rule amendments to be effective January 1, 2020.

6. 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., December 6, 2019.

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

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

delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by U.S. mail on October 28, 2019.

10. 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.

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

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

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

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

Certified to the Secretary of State October 29, 2019.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.70.107, 37.70.110,) PROPOSED AMENDMENT
37.70.115, 37.70.305, 37.70.401,)
37.70.402, 37.70.406, 37.70.408,)
37.70.601, and 37.70.607 pertaining)
to low income energy assistance)
program (LIEAP))

TO: All Concerned Persons

1. On December 3, 2019, at 9:00 a.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 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 November 26, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.70.107 REFERRALS TO THE QUALITY ASSURANCE DIVISION,
PROGRAM COMPLIANCE BUREAU (1) remains the same.

(2) Local contractors must make reports of possible overpayments or fraud to the department's ~~Intergovernmental Human Services Bureau (IHSB)~~ Human and Community Services Division (HCSD), P.O. Box 202956, Helena, MT 59620-2956. ~~IHSB~~ HCSD will review cases prior to referral to the PCB.

AUTH: 53-2-201, MCA
IMP: 53-2-201, MCA

37.70.110 FRAUD/TRANSFER OF RESOURCES (1) remains the same.

(2) If a person appears to have received assistance fraudulently, the local contractor must report all facts of the matter to the ~~Intergovernmental Human Services Bureau (IHSB)~~ department's Human and Community Services Division (HCSD) to determine if the case should be referred to the department's Quality

Assurance Division, Program Compliance Bureau (PCB). The PCB may refer the matter to the Department of Justice or the county attorney of the county in which the person resides for further action.

(3) through (5) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.115 OVERPAYMENTS AND UNDERPAYMENTS (1) remains the same.

(2) Except as provided in (3), current and future program year payments of LIEAP benefits will be reduced the full amount of prior overpayments, unless the administrative cost would exceed the amount of overpayment.

(a) Additionally, cases in which a person willfully made false statements or withheld information causing overpayment must be referred to the Intergovernmental Human Services Bureau (IHSB) department's Human and Community Services Division (HCSD) to determine if the case should be forwarded to the department's Quality Assurance Division, Program Compliance Bureau (PCB) for determination of fraud as provided in ARM 37.70.110.

(3) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.305 APPLICATION (1) through (3) remain the same.

(4) Publicly subsidized housing households whose energy costs are included as a fixed portion of their rent or households who reside in publicly subsidized housing and have an obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the 2018-2019 2019-2020 heating season. However, these households are eligible for weatherization assistance as provided in ARM Title 37, chapter 71 and a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in ARM 37.70.601 or a minimum payment of \$25, whichever is greater, paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

(5) through (7) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.401 DEFINITIONS (1) remains the same.

(2) ~~"Annual gross receipts" applies to households with income from self-employment and means all income before any deductions, including any nonexcluded income not from self-employment, which was received by members of the household in the 12 months immediately preceding the month of application or~~

~~the three months annualized, based on whichever method was used in determining eligibility.~~

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

(4) (3) "Base-load electric" costs are the costs represented in a utility company's bill for electricity that powers lights, and plug-in appliances, other than for heating or cooling, and electric and domestic water heaters heating.

(5) remains the same but is renumbered (4).

(6) (5) "Deliverable heating fuel" means heating fuel that can be delivered to the customer and stored for later use, for example, propane, fuel oil, kerosene, wood, or coal.

(7) through (12) remain the same but are renumbered (6) through (11)

(12) "Gross receipts" applies to households with income from self-employment and means all income before any deductions, including any nonexcluded income not from self-employment, which was received by members of the household in the six months immediately preceding the month of application.

(13) through (23) remain the same.

(24) "Mobile home" means a singlewide or doublewide trailer or, mobile home, manufactured home, camper, or recreational vehicle only.

(25) "Modified LIEAP benefit" means the amount paid to eligible households who reside in publicly subsidized housing and whose energy costs are included as a fixed portion of their rent or who have an obligation to pay a base-load electric bill. The modified LIEAP benefit is equal to 5 percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the 2018-2019 2019-2020 heating season or a minimum payment of \$25, whichever is greater paid to the household annually. Households determined eligible for the publicly subsidized housing modified LIEAP benefit, whose economic and housing situation does not change, are income eligible for a period of five years.

(26) through (29) remain the same.

(30) "Nontraditional dwelling unit" means dwelling units that include mobile shelters and other structures not designed for year-round human habitation. Mobile shelters include, but are not limited to, RV's and campers.

(30) through (37) remain the same but are renumbered (31) through (38).

(39) "Traditional dwelling unit" means a residential housing structure, including, without limitation, a mobile home and a modular home when permanently connected to the required utilities (including plumbing, heating, and electrical systems contained therein) and designed to be used as a permanent residence.

(38) through (40) remain the same but are renumbered (40) through (42).

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.402 GENERAL ELIGIBILITY REQUIREMENTS, ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS, AND HOUSEHOLDS

(1) through (6) remain the same.

(7) Residents of publicly subsidized housing whose energy costs are included as a fixed portion of their rent or who reside in publicly subsidized housing

and have an obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2018-2019~~ 2019-2020 heating season. However, these households are eligible for weatherization assistance as provided for in ARM Title 37, chapter 71 and a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit, or a minimum payment of \$25, whichever is greater, paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

(8) and (9) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.406 INCOME STANDARDS (1) Households with one through ~~seven~~ eight members with annual gross income at or below 60 percent of the estimated state median are eligible for LIEAP benefits on the basis of income. Households with ~~eight~~ nine or more members are eligible for LIEAP benefits on the basis of income only if the household's annual gross income is at or below 150 percent of the ~~2018~~ 2019 U.S. Department of Health and Human Services poverty guidelines for a household of that size. Households with annual gross income above the applicable income standard are ineligible for LIEAP benefits, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SNAP, SSI, or TANF-funded cash assistance.

(2) The department adopts and incorporates by reference the department's Low Income Energy Assistance Program (LIEAP) Table of Income Standards, ~~2018-2019~~ 2019-2020 heating season. The LIEAP table of income standards, ~~2018-2019~~ 2019-2020 heating season, is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, ~~Intergovernmental Human Services Bureau~~, P.O. Box 202956, Helena, MT 59620.

(3) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.408 RESOURCES (1) through (3) remain the same.

(4) The department adopts and incorporates by reference the department's LIEAP Table of Resource Standards, for the ~~2018-2019~~ 2019-2020 heating season. The LIEAP table of resource standards is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, ~~Intergovernmental Human Services Bureau~~, P.O. Box 202956, Helena, MT 59620.

(5) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) The department adopts and incorporates by reference the department's LIEAP Benefit Award Matrix and Table of Multipliers, for the ~~2018-2019~~ 2019-2020 heating season. The LIEAP Benefit Award Matrix is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, ~~Intergovernmental Human Services Bureau~~, P.O. Box 202956, Helena, MT 59620. These matrices are used to establish the benefit payable to an eligible household for a full heating season. The benefit varies by:

(a) through (g) remain the same.

(2) The benefit payable to an eligible household will be computed by multiplying the applicable amount in the table of base benefit levels found in the LIEAP Benefit Award Matrix for the ~~2018-2019~~ 2019-2020 heating season by the applicable matrix amount in the table of income/climatic adjustment multipliers found in the LIEAP Benefit Award Matrix for the ~~2018-2019~~ 2019-2020 heating season.

(3) remains the same.

(4) Publicly subsidized households whose energy costs are included as a fixed portion of their rent or who reside in publicly subsidized housing and have an out-of-pocket obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2018-2019~~ 2019-2020 heating season. However, these households may be eligible for a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2018-2019~~ 2019-2020 heating season or a minimum payment of \$25, whichever is greater, would be paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change would be determined eligible for a period of five years.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.607 AMOUNT AND METHOD OF PAYMENT (1) Eligible households that are billed for energy costs directly by the fuel vendor will be paid a benefit in the amount computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2018-2019~~ 2019-2020 heating season and will be paid as follows:

(a) through (d) remain the same.

(2) Eligible households that pay energy costs for heating their homes that are not billed directly by the fuel vendor because the fuel account is not in the name of a member of the household will be reimbursed for eligible energy costs paid by the

household, provided that the amount paid to the household for the heating season does not exceed the benefit amount computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2018-2019~~ 2019-2020 heating season. Reimbursement will be made by check payable to the household. The household must provide receipts to document paid eligible energy costs claimed. The household must provide receipts to support the paid eligible energy costs to the local contractor by June 20.

(3) and (4) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing the amendment of ARM 37.70.107, 37.70.110, 37.70.115, 37.70.305, 37.70.401, 37.70.402, 37.70.406, 37.70.408, 37.70.601, and 37.70.607 pertaining to the Low-Income Energy Assistance Program (LIEAP). LIEAP is a program to help low income households save home heating costs and address health and safety issues. The department proposes to make the following changes to its administrative rules governing LIEAP.

ARM 37.70.107, 37.70.110, 37.70.115, 37.70.406, 37.70.408, and 37.70.601

The department is proposing to remove all references to Intergovernmental Human Services Bureau. The amendment is necessary to reflect upcoming changes to organization to certain bureaus within the department.

ARM 37.70.305, 37.70.401, 37.70.402, 37.70.601, and 37.70.607

The department is proposing to amend these rules by providing that an updated LIEAP Benefit Award Matrix will be used for the 2019-2020 heating season. ARM 37.70.601 provides that, in most cases, an eligible household's benefit is computed by multiplying the applicable amount in the table of base benefits found in the LIEAP Benefit Award Matrix by the applicable multiplier from the table of income/climatic adjustment multipliers also found in the LIEAP Benefit Award Matrix. The amounts in the table of base benefits vary based on the type of heating fuel the household uses and the type and size of the household's dwelling. The benefit amounts also take into consideration available funding, fuel costs, and the number of households expected to receive benefits in a given heating season, all of which change from year to year. The amounts in the benefit tables in the LIEAP Benefit Award Matrix for 2019-2020 are being revised based on estimates of the amount of funds available to pay LIEAP benefits for the 2019-2020 heating season, the estimated number of households that will apply and be found eligible for the 2019-2020 season, and fuel cost projections for the 2019-2020 heating season. If the amounts in the benefit tables were not updated for the 2019-2020 heating season, the amount of benefits paid out for the season might exceed available funding or a large amount

of funds that could have helped low income households heat their homes might go unspent.

In addition to the table of base benefits, the LIEAP Benefit Award Matrix also contains a table of income/climatic adjustment multipliers. These multipliers are based on a household's income as a percentage of the federal poverty guidelines and on what part of the state the household lives in. The state is divided into ten regions with different multipliers to take into account the climatic differences from one part of the state to another, which have an impact on residential heating costs. It is not necessary to revise multipliers annually because the factors on which they are based do not vary significantly year to year. The department is not proposing any changes to the table of income/climatic adjustment multipliers in the LIEAP Benefit Award Matrix for 2019-2020 for this reason.

ARM 37.70.401

The department is proposing amendments to clarify terms used in this rule. This is necessary to ensure defined terms are interpreted as the department intends.

The department proposes to amend the "annual gross receipts" definition to ensure the LIEAP rules are consistent with current practice. The update to ARM 37.70.401(2) was missed during the previous rule amendment. The department amended the rules last year to change LIEAP eligibility related to household income to be based on 6 months' income annualized instead of 12 months. This allows for more low-income households to qualify for LIEAP. "Annual" will be omitted from the term "annual gross receipts" and the definition will be updated to reference the 6 months preceding the month of application. The department is proposing to amend this rule to remove the LIEAP eligibility requirement related to household income based on 3 months preceding the month of application. The reference to 3 months annualized is outdated.

The program intends to modify the definition of "base-load electric" to include all plug-in appliances and domestic water heating. This proposed change ensures compliance with current program policy and practice and ensures "base-load electric" is interpreted as the department intends. This proposed change will provide better clarity.

The program intends to add "wood" to the "deliverable heating fuel" term. Wood is considered a deliverable heating fuel for LIEAP. This proposed addition ensures compliance with current program policy and practice. This proposed addition ensures "deliverable heating fuel" is interpreted as the department intends. This proposed change will provide better clarity.

The program intends to modify the definition of "mobile home" to include manufactured home, campers, or recreational vehicles. This proposed modification ensures "mobile home" is interpreted as the department intends.

It is necessary to add a definition for "nontraditional dwelling unit" and for "traditional dwelling unit" to explain the different types of dwelling units. These terms will ensure compliance with current program policy and practice. This proposed change addresses the increased demand for assistance with different types of dwelling units.

ARM 37.70.406

The department proposes to amend this rule to provide that it will use the U.S. Department of Health and Human Services' poverty guidelines for 2019-2020, in the table of income standards used to determine eligibility for LIEAP for the 2019-2020 heating season. This change is necessary to take into account increases in the cost of living. The department uses the poverty guidelines for the current year because they are usually higher than the guidelines for the previous year, resulting in higher standards for the current heating season. If the department did not use the updated guidelines, some households might be ineligible for LIEAP due to inflationary increases in the household's income that do not reflect an increase in buying power.

To accurately reflect changes made to the State Median Income estimates by household size the department intends to amend the rule to indicate that households with one through eight members with annual gross income at or below 60 percent of the estimated state median are eligible for LIEAP benefits on the basis of income. Households with nine or more members are eligible for LIEAP benefits on the basis of income only if the household's annual gross income is at or below 150 percent of the 2019 U.S. Department of Health and Human Services poverty guidelines for a household of that size.

ARM 37.70.408

The department is proposing to amend this rule by updating the date of the LIEAP Table of Nonbusiness Resource Limits used to determine LIEAP eligibility on the basis of resources. This is necessary because (5) provides that the dollar limits on nonbusiness resources will be revised annually to adjust for inflation by multiplying the current dollar limits by either the percentage increase in the consumer price index (CPI) for the previous calendar year or 3 percent, whichever is less. The increase in the CPI for 2016 was 0.7 percent and in 2017 it was 2.1 percent. The nonbusiness resource limits for the 2019-2020 heating season will also increase by 2.1 percent. If the resource limits were not revised annually to adjust for inflation, some households might be ineligible for LIEAP because their resources exceed the resource limit although the buying power of their resources was less than in previous years due to inflation.

Fiscal Impact

LIEAP is 100 percent federally funded. Based upon the information available at this time, the department estimates that Montana will receive comparable funding to the last heating season. Benefit levels for households using all types of heating fuel and

for all dwelling types are expected to be comparable to the 2018-2019 heating season. It is estimated that 20,000 households will qualify for LIEAP benefits this year which is comparable to last year.

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

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., December 6, 2019.

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

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

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

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

/s/ Jennifer C. Kaleczyc
Jennifer C. Kaleczyc
Rule Reviewer

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

Certified to the Secretary of State October 29, 2019.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.85.105 pertaining to) PROPOSED AMENDMENT
updating Medicaid fee schedules with)
Medicare rates, procedure codes and)
updating effective dates)

TO: All Concerned Persons

1. On December 2, 2019, at 10:00 a.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 amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 26, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

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

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

(a) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at 83 Federal Register 226, page 59452 (November 23, 2018) effective January 1, 2019 which is adopted and incorporated by reference. Procedure codes created after ~~January 1, 2019~~ January 1, 2020 will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.

(b) Fee schedules are effective ~~July 1, 2019~~ January 1, 2020. The conversion factor for physician services is \$38.46. The conversion factor for allied

services is \$23.97. The conversion factor for mental health services is \$23.36. The conversion factor for anesthesia services is \$30.03.

(c) through (j) remain the same.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) and (b) remain the same.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~July 1, 2019~~ January 1, 2020.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in 2019 resulting in a dental conversion factor of \$34.09 and fee schedule is effective ~~October 1, 2019~~ January 1, 2020.

(e) through (j) remain the same.

(k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~July 1, 2019~~ January 1, 2020, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM 37.86.1802, effective ~~July 1, 2019~~ January 1, 2020. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~July 1, 2019~~ January 1, 2020.

(l) through (p) remain the same.

(q) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~July 1, 2019~~ January 1, 2020.

(r) and (s) remain the same.

(t) The optometric services fee schedule, as provided in ARM 37.86.2005, is effective ~~July 1, 2019~~ January 1, 2020.

(u) remains the same.

(v) The lab and imaging services fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~July 1, 2019~~ January 1, 2020.

(w) through (y) remain the same.

(z) The licensed direct-entry midwife fee schedule, as provided in ARM 37.85.212, is effective ~~July 1, 2019~~ January 1, 2020.

(aa) through (6) remain the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.105, pertaining to updating the effective dates of Medicaid fee schedules to January 1, 2020.

The following introductory explanation represents the reasonable necessity for the proposed amendments. The department administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low income, elderly, and disabled residents. Medicaid is a public assistance program paid for

with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

The proposed rule amendments are necessary so that the Montana Medicaid Program can adopt updates to procedure codes that the federal Medicare program will enact in January 2020. The federal Medicare program's updates include new code additions, code deletions, and changes to existing code descriptions and rates. Medicare enacts routine updates every January, and Montana Medicaid, which uses Medicare procedure codes for billing, must adopt the changes for the state program.

Specific changes are explained below.

The department proposes to revise the effective date for the following fee schedules to January 1, 2020, which are being revised to reflect the updated procedure codes adopted by CMS:

- (1) RBRVS fee schedule, ARM 37.85.105(2)(b)
- (2) Hearing aid services, ARM 37.85.105(3)(c)
- (3) Dentist fee schedule, ARM 37.85.105(3)(d)
- (4) Ambulance services, ARM 37.85.105(3)(q)
- (5) Optometric fee schedule, ARM 37.85.105(3)(t)
- (6) Lab and imaging fee schedule, ARM 37.85.105(3)(v)
- (7) Licensed direct entry midwives fee schedule, ARM 37.85.105(3)(z)

The department is proposing to amend the effective date of the reference in ARM 37.85.105(3)(k) to the Region D Supplier Manual to January 1, 2020. The department is amending the effective date of local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM 37.86.1802 to January 1, 2020. The department is proposing to revise the effective date regarding the durable medical equipment fee schedule to January 1, 2020 by proposing to adopt the Calendar Year 2020 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule and criteria.

Fiscal Impact

The following table displays the fiscal impact to State general funds for State Fiscal Year (SFY) 2020 and SFY 2021 and the number of providers affected for the proposed amendments.

Provider Type	SFY 2020 Impact (State General Funds)	SFY 2020 Impact (Federal Funds)	Total Impact	Providers Affected
Optometrists' Services	\$12,462	\$22,922	\$35,384	260
Durable Medical Equipment and Prosthetic Devices	\$40,469	\$74,434	\$114,903	455
Hearing Aids	\$524	\$964	\$1,488	35

Provider Type	SFY 2021 Impact (State General Funds)	SFY 2021 Impact (Federal Funds)	Total Impact	Providers Affected
Optometrists' Services	\$24,884	\$46,664	\$71,548	260
Durable Medical Equipment and Prosthetic Devices	\$80,807	\$151,530	\$232,337	455
Hearing Aids	\$1,046	\$1,962	\$3,009	35

The rule amendments are proposed to take effect January 1, 2020.

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., December 6, 2019.

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

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

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

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

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

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

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

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

Certified to the Secretary of State October 29, 2019.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.15.204, 42.15.216,	)	PROPOSED AMENDMENT
42.17.101, 42.17.103, 42.17.105,)	
42.17.111, 42.17.114, 42.17.131,)	
42.17.134, 42.17.135, and 42.17.203)	
pertaining to new Form MW-4 -)	
Montana Employee's Withholding)	
Allowance and Exemption Certificate,)	
wage withholding exemptions, and)	
tax treatment of interest on certain)	
government obligations)	

TO: All Concerned Persons

1. On December 3, 2019, at 11:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue 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, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 15, 2019. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF NECESSITY. The federal government has made substantial changes to federal tax law. Due to the changes in the law regarding the suspension of personal and dependent exemptions, the federal Employee's Withholding Tax Allowance Certificate Form W-4 (federal Form W-4) is no longer available for taxing jurisdictions, employers, or employees to calculate allowances used in the determination of wage withholding. To avoid discrepancies in wage withholding collection and provide employers with the means to fulfill their withholding requirement, the department determined it necessary to develop a new form, Montana Employee's Withholding Allowance and Exemption Certificate (Form MW-4), for employees to claim allowances for Montana wage withholding purposes in a manner that remains consistent with the method used prior to the 2018 tax year. The department also proposes to include all applicable employee wage withholding exemptions that require employer notification onto the Form MW-4, which is necessary to simplify and centralize all matters of wage withholding.

Based on the necessary implementation of Form MW-4, it is also necessary for the department to amend all corresponding administrative rule references in ARM Title 42, chapter 17, from federal Form W-4 to Form MW-4, to remove references to military employee and spouse Form MSR, and remove references to Form MT-R which has been previously used in Montana's reciprocal tax agreement with North Dakota.

The department is also proposing amendments to ARM 42.15.204 and 42.15.216 regarding tax treatment of interest on certain government obligations, which is based on the department's review of input received from withholding agents. The proposed amendments are necessary for the department to clearly differentiate for withholding agents those obligations that may involve tax-exempt interest from other types of obligations, such as guarantees, which may give rise to taxable income.

Further, as the department reviewed the affected rules, it observed some rule text contains unnecessarily descriptive language, is not in plain language, and uses gender-specific pronouns. Numerous instances include the word "such" as an article to the noun with which it is associated instead of more appropriate articles. In response, the department proposes several minor grammar and general syntax amendments it believes are necessary to fulfill the legal requirement that rules be drafted in plain, easily understandable language.

The necessity for any other proposed amendments specific to a rule are provided at the end of each rule.

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

42.15.204 DEFINITIONS The following definitions apply to rules found in this subchapter:

(1) remains the same.

(2) "Obligation" means, for the purposes of determining the applicability of the exclusion of interest income, an interest-bearing financial instrument of the United States government, a state, or a political subdivision, in the form of a bond, other written certificate, or loan issued pursuant to the exercise of such governmental body's borrowing power for use in governmental operations.

AUTH: 15-30-2620, MCA

IMP: 15-30-2117, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided at the beginning of this notice, the department finds it necessary to propose a new definition in ARM 42.15.204(2) to clarify that an obligation that creates excludable interest must be an obligation issued by the United States government, or a state or a political subdivision pursuant to the exercise of its borrowing power. This proposed definition is consistent with 15-30-

2620, MCA, is contextually consistent with IRC 103 and the exclusion of interest from obligations of federal government subdivisions from gross income, and is limited in scope to borrowing instruments. As a result, other obligations which do not arise from governmental loans of U.S. dollars for use of governmental operations are excluded.

42.15.216 EXCLUSION OF INTEREST ON OBLIGATIONS OF UNITED STATES GOVERNMENT AND U.S. POSSESSIONS (1) Interest on United States government obligations, as defined in ARM 42.15.204, and mutual fund dividends attributable to that interest, to the extent included in federal adjusted gross income, are exempt from Montana income tax. Interest on obligations of U.S. territories and government agency obligations specifically exempted by federal law, and mutual fund dividends attributable to that interest, are also exempt from Montana income tax.

~~(2) Obligations guaranteed by the United States government are not tax-exempt. Interest on, and mutual fund dividends attributable to, Government National Mortgage Association (Ginnie Mae) bonds, Federal National Mortgage Association (Fannie Mae) bonds, and Federal Home Loan Mortgage Corporation (FHLMC) securities are not exempt.~~

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

(3) Interest received from guarantees that do not conform to the definition in ARM 42.15.204, or obligations guaranteed by the United States government including mutual fund dividends attributable to Government National Mortgage Association (Ginnie Mae) bonds, Federal National Mortgage Association (Fannie Mae) bonds, and Federal Home Loan Mortgage Corporation (FHLMC) securities, are not tax-exempt.

AUTH: 15-30-2620, MCA

IMP: 15-30-2110, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided at the beginning of this notice, and for the reasons provided by the department in its statement of reasonable necessity for ARM 42.15.204, it is necessary for the department to amend ARM 42.15.216(1) and (3) to cross-reference the authority and proposed definition in ARM 42.15.204 for consistency between the rules. The department's proposed amendments to the catchphrase of this rule are necessary to reflect the amended content of the rule and to comply with ARM 1.2.214.

42.17.101 DEFINITIONS The following terms pertain to this chapter:

(1) remains the same.

~~(2) "Employer's agent" with regard to state withholding means a third party that bears no insurance risk and is reimbursed on a cost-plus-fee basis for payment of sick pay and similar amounts.~~

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

(4) (3) "Lookback letter" means the letter sent to employers notifying them of their filing frequency for employee wage withholding.

(5) and (6) remain the same but are renumbered (4) and (5).

~~(7)~~ (6) "Net taxable earnings" means an employee's gross earnings minus

~~the product of the number of the employee's claimed withholding allowances multiplied by the withholding exemption amount provided in 15-30-2114, MCA for the year the Montana withholding tables were last revised.~~

(8) through (10) remain the same but are renumbered (7) through (9).

~~(11) (10) "Remitter" means the individual, entity, or trust obligated under a mineral lease to pay royalties to the royalty owner or his their assignee, to deliver minerals to a purchaser to the credit of such the royalty owner or his their assignee, or to pay a portion of the proceeds of the sale of such the minerals to the royalty owner or his their assignee.~~

~~(12) (11) "Reporting forms" includes, but is are not limited to:~~

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

~~(c) Montana Employee's Withholding Allowance and Exemption Certificate form (Form MW-4);~~

~~(c) and (d) remain the same but are renumbered (d) and (e).~~

~~(e) (f) Form RW-3, the Montana Annual Mineral Royalty Withholding Tax Reconciliation form; and~~

~~(f) Form W-4, the federal Employee's Withholding Tax Allowance Certificate; and~~

~~(g) remains the same.~~

~~(13) "Sole proprietor" includes the individual owner of a single-member limited liability company that is disregarded for income tax purposes and may include a husband and wife partnership for the purpose of withholding.~~

~~(14) remains the same but is renumbered (12).~~

~~(15) "Withholding exemption" is the amount used in the computation of net taxable earnings. The withholding exemption for the 2017 annual table and computations is \$2,110. For other tables, the withholding exemption is divided by the divisor in ARM 42.17.105 corresponding to the payroll period.~~

AUTH: 15-30-2547, 15-30-2620, MCA

IMP: 15-30-2501, 15-30-2538, MCA

REASONABLE NECESSITY: In connection with the general statement of reasonable necessity provided at the beginning of this notice, the department finds it necessary to propose to remove the definitions in ARM 42.17.101(2), (13), and (15), because the term "sole proprietor" in (2) is already defined under 15-30-2501(5), MCA, the role of third-party administrators in benefits administration for employers in (13) has changed significantly since the current version of the rule was adopted, and the department will defer to the statutory authority referenced in the proposed amendments to (6) instead of what exists in (15). The department contends the proposed amendments, if adopted, will align the rule more closely to what is permitted under federal law.

The department also proposes to amend existing (12) to add the Form MW-4 and remove federal Form W-4 references and renumber sections. The department also proposes to correct grammar and subject identification or remove unnecessary verbiage in (2), (3), (4), (7), (11), and (15), which the department believes will further clarify rule requirements using plain language.

42.17.103 OTHER PAYMENTS; DESIGNATED DISTRIBUTIONS;

ELECTION TO WITHHOLD (1) Employee contributions to pensions, profit sharing, stock bonus, or annuity plans, deferred compensation and cafeteria plans where the payments are not otherwise considered wages, an IRA, or a commercial annuity contracts are exempt from withholding to the extent that the contributions are not includable in the employee's adjusted gross income for federal income tax purposes.

(2) ~~Third party's Sick pay, paid by an employer's agent, a third party is not subject to withholding taxes unless the payor receives~~ subject to withholding tax if requested in writing by a written request from the employee, or the employer and the third party entered into an agreement that makes the third party responsible for the reporting and payment of withholding taxes. When a third party reports and pays withholding taxes, the third party must use its own name and tax identification number instead of the employer's.

~~(a) A third party may be an employer's agent even if the third party is responsible for determining which employees are eligible to receive payments. Whether an insurance company or the other third party is the employer's agent depends on the terms of the agreement.~~

~~(b) A third party that makes payments of sick pay as the employer's agent is not considered the employer and generally has no responsibility for withholding taxes. This responsibility remains with the employer. However, under an exception to this rule, the parties may enter into an agreement that makes the third party agent responsible for reporting and payment of these taxes. In this situation, the third party agent should use its own name and customer identification number rather than the employer's.~~

~~(3) Payment of sick pay by a third party, other than an employer's agent, is not subject to withholding tax unless requested in writing by the recipient of the sick pay, or as described in (2).~~

~~(4) (3)~~ A recipient of any designated distribution from a deferred compensation plan, individual retirement plan, or commercial annuity, as defined in IRC 3405, may elect to have the payor withhold state income tax from such these payments by filing a written election Form MW-4 with the payor.

~~(a) Such~~ The recipient's tax withholding election shall specify a flat dollar amount of income tax to be withheld by the payor from each designated distribution or a number of allowances claimed by the recipient to be used with the withholding tax tables provided by the department. Such The election shall also specify the name, current address, and taxpayer identification number of the recipient. Any change or revocation of a previously filed election shall include the same information as required in this section rule for an initial election except the recipient should indicate whether a change or revocation of a previously filed election is being made. In this case, the payor shall remit the withholding tax to the department as required in ARM 42.17.113.

~~(5) (b)~~ The payor has the option to choose not to withhold from any designated distribution if the amount to be deducted and withheld is less than \$10. Additionally, income tax withholding by the payor from any designated distribution shall not be required if the amount to be withheld would reduce the net amount of such the distribution to less than \$10.

~~(6)~~ remains the same but is renumbered (c).

(a) and (b) remain the same but are renumbered (i) and (ii).

AUTH: 15-30-2620, MCA

IMP: 15-30-2501, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided at the beginning of this notice, the department proposes to amend ARM 42.17.103 to add the words "designated distributions" and "election to withhold" to the rule's catchphrase. The department believes this amendment is necessary to better summarize the rule's subject matter in accordance with ARM 1.2.214 and assist taxpayers who are not employees and practitioners to better locate and identify rules pertaining to elective withholding.

The department believes it necessary to refer to all plans described in (1) in the plural as the current subject-verb agreement in (1) is currently inconsistent.

In the interest of consistent rule organization, the department proposes to consolidate current (3) into current (2) because they are topically the same and (3) provides an additional requirement of that in (2).

The department proposes to amend (2) which is necessary to clarify that the subject the department is referencing is the withholding requirements with regard to employee's sick pay. Proposed amendments reflect necessary changes for consistency based on the removal of the employer's agent definition in ARM 42.17.101.

The department proposes to include in proposed (3) the specific IRC reference to designated distributions, which has expanded in recent years, to provide necessary federal law attribution and guidance in the rule. Additional amendments to proposed (3)(a) are necessary to allow payees that are not employees access to the same method of determining withholding tax used by employees.

The department believes it necessary in the interest of brevity and rule consistency to consolidate current (4), (5), and (6) because they all involve distributions stemming from the series of employee tax-exempt contribution plans referenced in (1).

42.17.105 COMPUTATION OF WITHHOLDING (1) Employers shall calculate the state income tax amount to withhold ~~from employees~~ according to the length of the payroll period, the employee's gross wages, the number of allowances claimed by the employee on Form MW-4, and the department's "Montana Wage Withholding Tax Tables," provided ~~online by the department~~ at www.mtrevenue.gov. The tables are based on the formulas provided in (2) and (3) and show the amount to withhold each pay period. and available:

~~(a) online at revenue.mt.gov; or~~

~~(b) by calling (406) 444-6900 in Helena; or~~

~~(c) by writing to:~~

~~Montana Department of Revenue~~

~~P.O. Box 5835~~

~~Helena, Montana 59604-5835.~~

(2) Montana wage withholding tables are based on the following annual

withholding formulas as adjusted annually for inflation. Wage withholding is equal to:

- (a) 1.80% of the first \$7,105 of net taxable earnings; plus
- (b) 4.40% of the next \$8,120 of net taxable earnings; plus
- (c) 6.00% of the next \$106,575 of net taxable earnings; plus
- (d) 6.60% of net taxable earnings over \$121,800.

(3) remains the same.

~~(4) The department publishes the tables based on the formulas in (2) and (3) at revenue.mt.gov, showing the amount to withhold each pay period for taxable incomes within ranges of taxable earnings.~~

(5) (4) By October 1 of each year, the department shall adjust the withholding formulas for inflation by multiplying the dollar amounts in (2) and the withholding exemption amount used in the determination of net taxable earnings in ARM 42.17.101 by the inflation factor, as defined in 15-30-2101, MCA.

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

AUTH: 15-30-2620, MCA

IMP: 15-30-2103, 15-30-2502, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided at the beginning of this notice, the department proposes amending ARM 42.17.105 to add text in (1) to describe the process and criteria of wage withholding calculations. These changes are necessary since the federal Form W-4 has been discontinued and contained much of this information, and a growing segment of the population has no prior withholding experience and has no reference to state income tax withholding compliance.

The department also proposes to remove references in (1)(a) through (c) to the department's phone number and mailing address as the primary means of obtaining information on withholding tables since that information is available through the department's internet website, which has become the primary access point for the public to receive this information. The department believes the changes are necessary for the department's withholding tax business references to be as current as other similarly adopted areas of the department.

The department also believes it necessary, in the interest of rule organization consistency, to move rule text from (4) and consolidate it with (1) and combine (6) to proposed (4), which are topically the same. The department intends the result will be a better organized and more concise rule. In addition, the department proposes to amend former (5) to align this section with the deletion of the definition of withholding exemption from ARM 42.17.101 and clarify what is adjusted for inflation.

42.17.111 WHO MUST WITHHOLD MONTANA INCOME TAX AND WHO IS SUBJECT TO WITHHOLDING; FORM MW-4 FILING REQUIREMENTS (1) Every employer ~~residing in Montana and every nonresident employer~~ transacting business in Montana is required to withhold Montana state income tax from wages paid to an employee for services rendered within Montana, unless the compensation is specifically exempted under Montana law.

~~(2) Wages paid to nonresidents or nonresident aliens rendering services within Montana are subject to withholding in all cases unless the compensation is specifically exempted under Montana law.~~

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

~~(4) (3) Temporary employment or employment of short duration within Montana of residents or nonresidents does not relieve the employer of the obligation to withhold on such employee wages.~~

~~(5) (4) The Amtrak Reauthorization and Improvement Act of 1990 exempts from state income tax and withholding the compensation of certain railroad, trucking, and air and water carrier employees unless they are Montana residents. The exemption from withholding applies only to nonresident interstate carrier employees and the employer applies the exemption based on the residency status claimed by the employee. No Form MW-4 is required for this exemption.~~

~~(6) (5) Wages paid to an enrolled member of a Native American tribe are subject to withholding, except: as provided in ARM 42.15.220.~~

~~(a) When the employee is an enrolled tribal member of the governing tribe of the reservation on which the enrolled tribal member works and resides:~~

~~(i) remains the same.~~

~~(ii) the employee submits a Form MW-4 statement to the employer attesting that the employee resides on his or her reservation, together with a certificate of enrollment.~~

~~(b) When wages are derived from both reservation sources and nonreservation sources, only wages derived from reservation sources are exempt from withholding, provided the employee meets all the criteria in (6) (5)(a).~~

~~(c) When an employee does not reside on his or her reservation for an entire pay period, only wages earned while the employee was residing on the reservation are exempt from taxation, provided the employee meets all the criteria in (6) (5)(a).~~

~~(7) (6) Wages paid to a resident of North Dakota for personal services rendered within Montana are not subject to withholding provided the employee has filed a Form MT-R, Reciprocity Exemption from Withholding MW-4, in accordance with ARM 42.17.134.~~

~~(8) (7) Wages paid to the nonmilitary spouse of a military serviceperson for personal services rendered in Montana which meet the criteria in ARM 42.15.112, are not subject to withholding provided the employee has completed a Form MSR, Employee Certificate of Status under the Military Spouses Residency Relief Act MW-4.~~

~~(8) A withholding exemption claimed on Form MW-4 must be renewed annually. When an employee no longer needs or qualifies for an exemption, the employee must notify the employer by providing a new Form MW-4 without the previously claimed exemption. If an employee fails or refuses to provide the updated Form MW-4, the employer must withhold on the basis of zero withholding allowances, in compliance with ARM 42.17.131.~~

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, MCA

REASONABLE NECESSITY: In addition to the general statement of

reasonable necessity provided at the beginning of this notice which relates to the department's proposed amendments in ARM 42.17.111(1), (4), (7), and (8), the department determines it necessary to amend this rule's catchphrase for ease of reference, to better summarize the rule's contents, and reflect the purpose of the rule, in accordance with ARM 1.2.214.

The department also proposes to amend (5) to clarify that the department will not use Form MW-4 to grant wage withholding exemptions to inter-state carriers. This amendment is necessary because it is existing practice to have the employer directly apply this exemption based on the residency status of the employee and a rule provision should not conflict with current practice.

The department proposes to amend (6) to reference current ARM 42.15.220 for clarity and to replace the attestation from the enrolled tribal member by Form MW-4 to apply for the withholding exemption. The information on the form will be used by the employer in its wage withholding reporting to the department.

Proposed (8) provides that Form MW-4 must be renewed every year which is the same for all other claimed withholding exemptions. The department contends this is necessary to achieve the reporting compliance goals with minimal burden to employers and employees. The provisions pertaining to what happens when an employee no longer needs or qualifies for the withholding exemption is necessary for consistency with existing requirements in ARM 42.17.131.

42.17.114 ANNUAL RECONCILIATION AND WAGE STATEMENTS (1) On or before January 31 of each year, every employer must file with the department a Form MW-3, Montana Annual W-2 1099 Withholding Tax Reconciliation. Form MW-3 must be accompanied by the original copies of each employee's earnings statements on federal Form W-2.

(a) Employee's earning statements and the federal Form W-2 must be prepared for each employee, regardless of whether or not withholding taxes were actually withheld from the employee's wages. The state non-exempt wages as provided in ARM 42.17.111 or 42.17.134 and state income tax withheld must be shown in the boxes labeled for state information.

(b) through (5) remain the same.

AUTH: 15-30-2620, MCA

IMP: 15-30-2506, 15-30-2507, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.114(1)(a) to clarify the employer requirement that non-exempt wages and related withholding be recorded on Form W-2, and that a partial employee exemption is not an employer exemption to complete and provide Form W-2 for state tax purposes. As similarly stated in the department's statement of reasonable necessity for ARM 42.17.111, this requirement is consistent with other wage-based calculation and reporting requirements of an employer and is an extension of existing department policy and a reasonable request to place on employers of tribal employees that seek exemption from withholding.

42.17.131 EMPLOYEE'S WITHHOLDING ALLOWANCES (1) For purposes

of determining the employee's withholding allowances and withholding exemptions, the amount claimed for Montana may be different than the amount claimed on the federal Employee's Withholding Allowance Certificate (Form W-4), reported on the line stating "total number of allowances you are claiming," furnished by the employee to the employer for federal withholding tax purposes. The department may determine whether the amount claimed on the federal Form W-4 should be adjusted for state withholding purposes. The department does not provide a separate form for this purpose Form MW-4. The department has determined that the federal child tax credit that allows extra allowances for federal withholding is not allowed for Montana purposes when determining the number of allowances for Montana withholding.

(2) remains the same.

(3) If an employee fails or refuses to provide the number of allowances on federal Form W-4 MW-4 reported on the line stating "total number of allowances you are claiming," the employer shall withhold, for Montana purposes, on the basis of zero withholding allowances.

(4) Any change to the "total number of allowances you are claiming" on federal Form W-4 for federal purposes, including federal redeterminations of allowances, automatically changes the number of allowances for Montana purposes unless the allowances have been set at a maximum number by the department under (5). If a redetermination allows extra allowances for the federal child tax credit for federal purposes, these extra allowances will not be allowed for state purposes.

(5) (4) The department may revise the number of withholding allowances claimed to a maximum allowed for state tax purposes.

(a) For any federal Form W-4 MW-4 on which an employee has claimed more than ten withholding allowances, the following apply:

(a) (i) The employer must provide the department with a an electronic copy of the federal Form W-4 MW-4 provided by the employee as described in (5), no later than the last day of the payroll period during which the employer received the form to the following address:

Department of Revenue
P.O. Box 7149
Helena, Montana 59604-7149.

(b) The department may revise the number of withholding allowances claimed to a maximum allowed for state tax purposes.

(c) (ii) The employer shall must continue to withhold based on the most recently filed federal Form W-4 MW-4 with fewer than 11 allowances claimed. If no Form W-4 MW-4 with fewer than 11 allowances has been was previously filed, the employer shall withhold for Montana purposes on the basis of zero withholding allowances.

(d) (iii) If upon review, the department determines that the federal Form W-4 MW-4 provided is defective, the department may require that the employer disregard the allowances claimed and advise the employer in writing of the maximum number of withholding allowances permitted the employee for state tax withholding purposes.

~~(e)~~ (b) The filing of a new federal Form ~~W-4~~ MW-4 by an employee whose withholding allowances have been set at a fixed maximum number by the department shall be disregarded by the employer unless a number equal to or fewer than the set maximum is claimed or written notice by the department is given authorizing a different maximum.

~~(6)~~ (c) When adjusting claimed withholding allowances for an employee ~~under (5)~~, the department shall consider:

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

~~(d)~~ (iv) ~~estimated allowable deductions under 15-30-2111, 15-30-2131, 15-30-2132, and 15-30-2133, MCA, to the extent that such deductions exceed the average itemized deductions taken into account in the withholding tables;~~

~~(e)~~ (v) ~~business losses~~ any Montana net operating loss deduction carryover or allowable tax credit carried over from past years;

~~(f)~~ (vi) annuity plan contributions; and

~~(g)~~ (vii) residency; and

~~(h)~~ (d) ~~federal Form W-4, personal allowances worksheet.~~

~~(7)~~ (d) If the department does not have sufficient information to determine the maximum number of permitted allowances ~~in (5)~~, the department shall use its best estimate of the employee's eligible exemptions when determining the withholding allowances.

~~(8)~~ (5) Employers shall provide a copy of an employee's federal Form ~~W-4~~ MW-4 no later than the last day of the payroll period during which the employer received the form, if more than ten allowances or one of the exemptions referenced on the form were claimed, or at any time upon request by the department, at any time, for the purposes of state tax administration. The employer's electronic submission must be made to the department as instructed on Form MW-4.

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, MCA

REASONABLE NECESSITY: In connection with the general statement of reasonable necessity provided at the beginning of this notice, the department proposes to amend ARM 42.17.131(1), (3), (4), and (5) by striking claimed allowances language because it is no longer relevant in light of the discontinuation of the Form W-4 and inserting necessary Form MW-4 references. As an extension of the discontinuation of the federal Form W-4, the department also proposes to transfer, reorganize, and renumber content from current (5) through (8), to proposed (4) and (5) for economy of referencing. The department intends these amendments will better reflect the department's general authorization to revise withholding allowances and then address specific withholding compliance matters when employees claim more than ten withholding allowances, which was also present in the former federal Form W-4.

The department also proposes to remove references in (4) to the department's mailing address as the means of filing payroll reports with the department. These changes are necessary because employers file wage and withholding reports via the department's online portal.

The department proposes amendments as renumbered (4)(c) which seek to

simplify the adjustment of allowances by removing calculations a taxpayer can claim under 15-30-2111 and 15-30-2131, MCA, because these calculations could be dependent on future facts and circumstances and not historical or existing ones. All estimations will be based on standard deduction instead, which is necessary to provide more consistently applied department withholding calculations. Net operating loss deductions will continue to be included in the estimation. In addition, the estimation will now include credits carried forward from previous years.

42.17.134 RECIPROCAL AGREEMENT - NORTH DAKOTA (1) Under the terms of the Income Tax and Withholding Tax Reciprocal Agreement between Montana and North Dakota, and to the extent this agreement is in effect, An an employer is not required to deduct withhold Montana state income tax withholding on wages earned by residents of North Dakota under the provisions of the Income Tax and Withholding Tax Reciprocal Agreement between Montana and North Dakota. Relief from withholding is subject to all of the provisions in (2) through (5) this rule.

(2) A North Dakota resident performing services in Montana for compensation must annually provide Form MT-R, Reciprocity Exemption from Withholding, MW-4 to their employer before the employer may discontinue withholding on compensation earned in Montana. The certificate must be filed with the employer within 30 days of the start of employment. The certificate is valid only from the date filed to December 31 of the year in which filed. A new certificate to renew the exemption from withholding must be filed with the employer by the last day in February of each year. The certificate is rendered invalid if the employee changes his or her residence to any state other than North Dakota from January first of the exemption year or from the date the certificate is provided to the employer whichever comes last, and until December 31 of the exemption year or until the date when the employee establishes residency in a state other than North Dakota whichever comes first.

(3) ~~Withholding from a North Dakota resident's compensation earned in Montana must be treated as if earned in North Dakota. If North Dakota requires withholding from the compensation, the North Dakota withholdings must be deducted from the compensation.~~

(4) ~~A copy of the employee's Form MT-R must be submitted by the employer to the department within 30 days of when it is provided to the employer in the case of new employment, or by March 31 if the form is renewing an exemption.~~

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

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, 15-30-2509, 15-30-2621, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided at the beginning of this notice, the department proposes amending ARM 42.17.134(1) to better state the existence and current effect of the Income Tax and Withholding Tax Reciprocal Agreement (Reciprocal Agreement) between Montana and North Dakota.

The department's proposed amendment to (2) is necessary, for consistency, as the department has specified in other rules that the withholding exemption

claimed under Form MW-4 is valid for a maximum of one year. The application of this amendment is consistent with the other rules where an employee's claim for exemption has a limited duration.

The department proposes to strike current (3) because of potential conflicts between the rule and the Reciprocal Agreement involving North Dakota residents, and (4) because the Form MT-R has been replaced with the Form MW-4 and the rule language is no longer valid. As a result of the amendments to (3) and (4), current (5) will be renumbered.

42.17.135 FALSE STATEMENTS BY EMPLOYEES - RECOMPUTATION AND ESTIMATION OF WITHHOLDING (1) Where the department determines that an employee has provided a false ~~statement through withholding certificate or falsified certificate of North Dakota residency~~ a Form MW-4, it may require the employer to deduct and withhold from the employee's current wages a recomputed amount of withholding for the current year wages of the employee based on the proper amount of withholding which would have been taken had the false filing not been made. If the employee has terminated employment and has been paid all wages earned prior to notification of required recomputation, the employer shall not be held liable for the uncollected withholding.

(2) If an employer has knowledge that a falsified ~~certificate~~ Form MW-4 has been provided by the employee and fails to notify the department as required, the employer may be held liable for withholding not collected.

(3) The department may estimate the amount of non-exempt wages and withholding owed by the employer if it determines that the method used to account for non-exempt wages reported on Form W-2 or MW-3 does not accurately reflect the proportion of non-exempt wages earned by an employee. When no records have been kept, or no records are provided, the department may subject all wages to withholding, as required by 15-30-2502, MCA.

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, 15-30-2509, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided at the beginning of this notice, the department proposes to amend ARM 42.17.135(1) to match the false statement text in the rule with the rule's catchphrase. This change is necessary to clarify that employee withholding forms - including the proposed Form MW-4 - are not the only types of statements which are relied upon by the employer and the department.

The department also proposes the addition of (3) to explain the statutory authority given the department to estimate an employee's non-exempt wages even if the employee has claimed an exemption. The addition of (3) is necessary and consistent with other tax and reporting regulations to indicate under what circumstances the department may apply its authority to correct or amend tax calculations and reports for errors or fraud. The proposed amendment also states that when no records are provided, and in spite of the exemption claimed, the department is allowed under statute to subject up to the entire wages to withholding, because the exemption has not been substantiated. Based on the proposed

amendment in (3), the department also proposes to add the words "and estimation" to the rule's catchphrase to convey the additional content and comply with ARM 1.2.214.

42.17.203 RECORDS TO BE KEPT BY EMPLOYER (1) ~~As required by ARM 42.2.305, e~~Employers must keep employment records for each employee for five years from date of payment and make records available for department review for five years, as provided by ARM 42.2.305. ~~Such~~ The records must show:

- (a) For each pay period:
 - (i) remains the same.
 - (ii) the total wages, as defined in 15-30-2501, MCA, for employment in ~~such~~ the pay period; and
 - (iii) remains the same.
- (b) For each employee:
 - (i) the employee's full name;
 - (ii) through (iii)(B) remain the same.
 - (C) estimated or actual amount of gratuities received from persons other than employer; ~~and or~~
 - (D) special payments of any kind, including annual bonuses, gifts, prizes, etc.
 - (iv) remains the same.
 - (v) the date employment was terminated ~~by layoff, quit, discharge, or death;~~
 - (vi) the cause of any termination, such as voluntary by employee, layoff, discharge, or death;
 - (vii) and (vii)(A) remain the same.
 - (B) if the employee is paid on a fixed daily basis, the employee's daily rate and the customarily scheduled days per week prevailing in the establishment for ~~his~~ their occupation; and
 - (C) remains the same.
 - (viii) documents supporting employee expense reimbursements; ~~and~~
 - (ix) when an exemption under ARM 42.17.111 is in effect, the portion of non-exempt wages paid to the employee for each pay period, and the method used to calculate this portion.
- (2) remains the same.
- (3) The department is authorized to examine ~~any and~~ all records necessary for the administration of the withholding and estimated tax law (Title 15, chapter 30, part 25, MCA). Examples of T~~these~~ records include, ~~but are not limited to:~~
 - (a) through (e) remain the same.
 - (f) loan documentation; ~~and~~
 - (g) federal and state withholding allowance and exemption certificates; and
 - (g) remains the same but is renumbered (h).

AUTH: 15-30-2620, MCA
IMP: 15-30-2504, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided at the beginning of this notice, the department proposes amending ARM 42.17.203(1) by primarily reorganizing the structure of the

sentence for increased clarity. Based on employer feedback, the department also believes it necessary to specify the time period that the employer must keep employment records for department review referred to in the stricken reference to ARM 42.2.305. The department also proposes some minor grammatical amendments to (1)(a) and (b) and a relocation of text in (1)(b)(v)(D) to (1)(b)(vi)(D), both of which add to the readability of the rule.

The department proposes inserting new (1)(b)(ix)(D) to require that employers keep in their employment records the calculations of non-exempt wages. This is necessary to complete the other non-exempt wage rulemaking requirements proposed in this rulemaking in ARM 42.17.111, 42.17.114, 42.17.131, and 42.17.135, because the employer's recordkeeping is often relied upon for audit purposes and in an employer's defense of adverse audit findings.

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: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., December 13, 2019.

6. Todd Olson of the Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. The Department of Revenue 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, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-3696 or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

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

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State October 29, 2019.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.12.501 through 42.12.505) PROPOSED AMENDMENT
pertaining to competitive bidding)
processes for retail all-alcoholic)
beverage licenses)

TO: All Concerned Persons

1. On December 4, 2019, at 11:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue 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, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 15, 2019. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

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

42.12.501 DEFINITIONS The following definitions apply to this subchapter:

(1) through (3) remain the same.

(4) "Irrevocable letter of credit (ILOC)" means a letter of credit between a financial institution and a bidder, in accordance with Title 30, chapter 5, MCA, in which the issuing financial institution guarantees the:

(a) the bidder's ability to pay the payment of a stated bid amount;

(b) the ILOC will be irrevocable for a minimum of one year from the date of the competitive bidding closing if the bidder's bid is the highest bid submitted for the available license; ~~financial institution will not withdraw the credit or cancel the letter if the bidder's bid results in being the highest bid submitted for the available license;~~

(c) the department is named as beneficiary of the ILOC financial institution will not modify or revoke the credit without the department's consent if the bidder's bid results in being the highest bid submitted for the available license; and

(d) the financial institution will not modify the ILOC without the department's consent if the bidder's bid is the highest bid submitted for the available license. ~~department as the beneficiary; and~~

(e) ~~financial institution's commitment to honor the line of credit for a minimum of one year from the date of the competitive bidding closing if the bidder's bid results in being the highest bid submitted for the available license.~~

(5) "Minimum bid amount" means the lowest acceptable bid amount. The minimum bid amount shall be set by the department at 75 percent of the market value of licenses of the same type and privileges that have sold within the quota area or similar quota area.

(6) remains the same.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-430, MCA

REASONABLE NECESSITY: The department has determined that it is necessary to propose amendments to the definition of "Irrevocable Letter of Credit (ILOC)" contained in ARM 42.12.501(4) in order to implement portions of 16-4-430, MCA (2019), regarding the competitive bidding process for alcoholic beverage licenses. The department proposes its ILOC amendments to align with the requirements of 16-4-430, MCA, while adopting many statutory ILOC standards found in Title 30, chapter 5, MCA, which are required of Montana-regulated financial institutions. The department's acceptance and recognition of industry-standard ILOC terms is consistent with past department efforts to recognize customary banking industry practices in liquor licensing matters, such as security interests and cross-collateralization involving alcoholic beverage licenses.

The department also proposes to amend the definition in (5) to clarify it is the department's responsibility to set the minimum bid amount for licenses offered through the competitive bidding process.

The department proposes amending the rule's implementing citations to include 16-4-430, MCA, for the rule to comply with 2-4-305(3), MCA.

42.12.502 PUBLISHING OF ALCOHOLIC BEVERAGE LICENSE AVAILABILITY (1) through (4) remain the same.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-430, MCA

REASONABLE NECESSITY: The department proposes amending the implementing citations for the rule to include 16-4-430, MCA, for the rule to comply with 2-4-305(3), MCA.

42.12.503 RETAIL ALCOHOLIC BEVERAGE LICENSE COMPETITIVE BID FORMS (1) Competitive bid forms pursuant to ARM 42.12.502 must be submitted electronically ~~on a form provided by~~ to the department.

(2) remains the same.

(3) The department shall notify the highest bidder, in writing, if any deficiencies exist on the highest bidder's bid form. The highest bidder shall have the opportunity to correct any deficiencies by submitting a revised bid form within five business days of being notified.

~~(3) (4)~~ A bidder will be disqualified from the competitive bidding process if:

(a) and (b) remain the same.

~~(c) the competitive bid form is not signed;~~

- (d) remains the same but is renumbered (c).
- ~~(e) the competitive bid form is incomplete;~~
- (f) through (h) remain the same but are renumbered (d) through (f).
- ~~(i) (g) the irrevocable letter of credit is not equal to or greater than the bidder's bid amount; or~~
- ~~(j) (h) the irrevocable letter of credit fails to specify the license type and/or quota area; or~~
- ~~(k) the department determines, for any other reason, the information provided is inaccurate or incomplete.~~

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-401, 16-4-420, 16-4-430, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.503 which is necessary to implement provisions contained in 16-4-430, MCA (2019). Section 16-4-430, MCA, allows a bidder in a competitive bidding process for an alcoholic beverage license to correct any deficiencies on their bid form within five business days of being notified by the department. The department proposes to include language in (3) that specifies the five-business day time frame begins when the applicant is notified in writing by the department. Sending a written notification is necessary to inform the applicant of when the deficiency correction period starts.

The department proposes to remove from (4) the three referenced circumstances which previously disqualified the bidder from the competitive bidding process. Under current law, the electronic bid form cannot be submitted without all information included, so those three circumstances are obsolete and unnecessary to keep in the list.

Based on the existence of the department's electronic bid form, through which all competitive bids are currently submitted to the department, the department finds it necessary to propose the removal of references in (1) to the rule that contained form publication language and clarify that no physical bid form is used to enter the competitive bid process.

Lastly, the department proposes amending the implementing citations to include 16-4-430, MCA, for the rule to comply with 2-4-305(3), MCA.

42.12.504 DETERMINATION OF SUCCESSFUL RETAIL ALCOHOLIC BEVERAGE LICENSE COMPETITIVE BIDDER AND SUBMISSION OF COMPLETED APPLICATION (1) remains the same.

(2) ~~Regardless of the timing of bids, in~~ In the event a bidder places multiple bids, the department shall accept the highest bid placed by the bidder.

(3) remains the same.

(4) The department shall notify the highest bidder in writing.

(5) and (6) remain the same.

(7) The information provided by the applicant on the application for licensure must match the information provided on the competitive bid form. Failure to provide identical information will result in ~~disqualification and~~ denial of the application ~~will be denied~~.

(8) and (9) remain the same.

~~(10) The licensee must commence business within one year of receiving the department's notification in (4) unless the department grants an extension.~~

~~(11) The licensee is subject to forfeiture of the license at the department's discretion if the licensee:~~

~~(a) transfers the license to another person unless the transfer is due to the death of the licensee;~~

~~(b) does not use the license within one year of receiving the license unless the department grants an extension;~~

~~(c) places the license on nonuse within 5 years of receiving the license; or~~

~~(d) proposes to use the license in a location which has had the same license type within the previous 12 months.~~

~~(12) (10) If the application for licensure is withdrawn, not approved or the license is forfeited pursuant to 16-4-430(7), MCA, or if the department denies the application for licensure, the next highest bidder will be notified in writing. The next highest bidder will have two weeks to submit an irrevocable letter of credit for their bid amount if the original letter of credit was cancelled. The next highest bidder shall comply with the requirements of (5) through (9) and 16-4-430(4), MCA.~~

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-430, MCA

REASONABLE NECESSITY: The department proposes to amend the catchphrase of the rule to reflect the rule's updated content in conformity with ARM 1.2.214.

Section (2) is proposed to remove language that the department believes is unnecessary. The department believes the amended section sufficiently describes how the department will select bids submitted by the same bidder.

Section (4) is proposed to provide clarification on how the department will notify the highest bidder. The department proposes the amendment to reflect the preferred means of how the department notifies the highest bidder. When written notifications are used, quality assurance of department processes is heightened, and document retention policies are integrated.

Section (7) is proposed to remove an inaccurate, procedural reference to an application's disqualification when the information on the application does not match the information on the competitive bid form. In these instances, the application is denied, it is not disqualified; and it is necessary for the rule to contain technically correct terminology.

Sections (10) and (11) are proposed for removal because the licensee's requirement to operate within one year of receiving the license, and the reasons the license is subject to forfeiture, are now provided in 16-4-430, MCA, and are unnecessary to include in rule.

Proposed renumbered (10) would remove rule text and add statutory authority for circumstances when an application is not issued. The department believes the amendments are necessary for consistency between statute and the procedural aspects of the rule section.

42.12.505 DETERMINATION OF BOUNDARIES FOR THE LOCATION OF PREMISES (1) and (2) remain the same.

(3) Except as provided in 16-4-105, 16-4-201, and 16-4-420, MCA, Under no circumstance may a license, restricted by the quota limitations in 16-4-105, 16-4-201, or 16-4-420, MCA, be located farther than:

(a) and (b) remain the same.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-420, MCA

IMP: 16-4-105, 16-4-201, 16-4-420, 16-4-430, MCA

REASONABLE NECESSITY: The department has determined that it is necessary to propose amendments to ARM 42.12.505 in order to implement portions of 16-4-430, MCA (2019). Section 16-4-430, MCA, now specifies how certain incorporated cities' boundary lines shall be determined and to which quota area the affected licenses would belong. The department proposes to include an exception in (3) to reflect these statutory allowances.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., December 13, 2019.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue 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, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail and email on May 23, 2019, and on October 24, 2019.

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State October 29, 2019.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.19.401, 42.19.402,	)	PROPOSED AMENDMENT AND
42.19.405, and 42.19.407, and the	)	REPEAL
repeal of ARM 42.19.403 and)	
42.19.404 pertaining to property tax)	
assistance program (PTAP) and)	
Montana disabled veteran (MDV))	
property tax assistance program)	

TO: All Concerned Persons

1. On December 3, 2019, at 10:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue 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, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 15, 2019. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

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

42.19.401 PROPERTY TAX ASSISTANCE PROGRAM (PTAP) AND MONTANA DISABLED VETERAN (MDV) PROPERTY TAX ASSISTANCE PROGRAM (1) The property owner of record or the property owner's agent must make application to the local department office to receive the PTAP benefit provided for in 15-6-305, MCA or the MDV benefit provided for in 15-6-311, MCA.

(2) The PTAP benefit is administered through a reduced property tax rate that applies to the first \$200,000 or less of the appraised value of the applicant's residential real property. The MDV benefit is administered through a reduced property tax rate that applies to the residential real property of a qualified veteran or qualified veteran's spouse as provided for in 15-6-301 and 15-6-311, MCA.

(a) remains the same.

(b) ~~Eligible property may include a~~ If the primary residence is a mobile or manufactured home and that is assessed ~~the separately assessed from the land upon which it is located, both~~ the mobile or manufactured home and the land upon which it is located may qualify for the benefit if only if the mobile or manufactured home and land they ~~are both owned by the applicant. If the land is not owned by the~~

applicant, the benefit applies only to the mobile or manufactured home. To be eligible, the property must be:

(i) through (5) remain the same.

(6) A temporary stay in a nursing home or similar facility will not change an applicant's primary residence for the purposes of the PTAP or MDV benefits.

(7) The ~~PTAP~~ benefit does not transfer to the new owner of the dwelling.

(8) through (11) remain the same.

(12) The department may waive the April 15 application deadline at any time the department's local office or the ~~Office of Taxpayer Assistance~~ department's taxpayer advocate consults with local aging services or disability offices and confirms a hardship case exists. The department must document its finding.

(13) remains the same.

(14) Each year the department will:

(a) verify the qualifying income and eligibility of ~~PTAP~~ applicants and participants;

(b) and (c) remain the same.

(d) advise taxpayers of their right to appeal the department's determination to the ~~State~~ Montana Tax Appeal Board within 30 days of receiving a determination letter.

(15) The information ~~PTAP~~ applicants provide the department is subject to the false swearing penalties established in 45-7-202, MCA. The department:

(a) through (16) remain the same.

AUTH: 15-1-201, 15-6-302, MCA

IMP: 15-6-301, 15-6-302, 15-6-305, 15-6-311, 15-6-312, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.19.401 by consolidating similar content from ARM 42.19.403 into the rule for efficiency. The department will propose the repeal of ARM 42.19.403 based on these amendments. The department also proposes updating the rule's catchphrase to reflect the rule's new content, as required by ARM 1.2.214, and updating the references to the Office of Taxpayer Assistance in (12) and the State Tax Appeal Board in (14)(d) to the department's Taxpayer Advocate and Montana Tax Appeal Board, respectively.

The department is updating the implementing citations, in accordance with 2-4-305, MCA, to correspond with the rule amendments.

42.19.402 INFLATION ADJUSTMENT FOR PROPERTY TAX ASSISTANCE PROGRAM (PTAP) AND FOR MONTANA DISABLED VETERAN (MDV)

PROPERTY TAX ASSISTANCE PROGRAM (1) Sections 15-6-301, ~~and 15-6-305, and 15-6-311~~, MCA, provide property tax relief to low income homeowners, qualified disabled veterans, and qualified veterans' spouses. Sections 15-6-301, ~~and 15-6-305, and 15-6-311~~, MCA, also require the department to annually adjust the income schedules used to determine the eligibility and the amount of relief to account for the effects of inflation.

(2) The calculation of the inflation adjustment shall be made on a yearly basis as follows:

(a) Sections 15-6-301, and 15-6-305, and 15-6-311, MCA, specify that the implicit price deflator for personal consumption expenditures (PCE), published quarterly in the Survey of Current Business by the Bureau of Economic Analysis of the U.S. Department of Commerce, is to be used in the calculation of the inflation factor.

(b) remains the same.

(c) The inflation factor, calculated per the previous section, is used to annually adjust the base year income schedules for the effects of inflation.

Each income figure in the base year income schedule is multiplied by the inflation factor calculated for the tax year in question in order to update the schedule. The product is then rounded to the nearest whole dollar amount.

(3) The base year income schedule for PTAP as provided in 15-6-305, MCA, is as follows: ~~below.~~

----- PTAP Base Year Income Schedule -----

Single Person	Head of Household or Married Couple	Percentage Multiplier
\$0 - \$8,413	\$0 - \$11,217	20%
\$8,414 - \$12,900	\$11,218 - \$19,630	50%
\$12,901 - \$21,032	\$19,631 - \$28,043	70%

(4) The base year income schedule for MDV as provided in 15-6-311, MCA, is as follows:

----- MDV Base Year Income Schedule -----

<u>Single Person</u>	<u>Head of Household or Married Couple</u>	<u>Surviving Spouse</u>	<u>Percentage Multiplier</u>
<u>\$0 - \$37,404</u>	<u>\$0 - \$44,885</u>	<u>\$0 - \$31,170</u>	<u>0%</u>
<u>\$37,405 - \$41,145</u>	<u>\$44,886 - \$48,626</u>	<u>\$31,171 - \$34,911</u>	<u>20%</u>
<u>\$41,146 - \$44,885</u>	<u>\$48,627 - \$52,366</u>	<u>\$34,912 - \$38,651</u>	<u>30%</u>
<u>\$44,886 - \$48,626</u>	<u>\$52,367 - \$56,107</u>	<u>\$38,652 - \$42,392</u>	<u>50%</u>

AUTH: 15-1-201, MCA

IMP: 15-6-191, 15-6-301, 15-6-305, 15-6-311, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.19.402 by consolidating similar content and adding the MDV inflation adjustment information from ARM 42.19.404 into the rule for efficiency. The department will propose the repeal of ARM 42.19.404 based on these amendments. The department also proposes updating the rule's catchphrase to reflect the rule's new

content, as required by ARM 1.2.214. The department is updating the implementing citations, in accordance with 2-4-305, MCA, to correspond with the rule amendments.

42.19.405 DEFINITIONS The following definitions apply to rules in this subchapter.

(1) remains the same.

(2) "Percentage reduction" means the amount by which the property tax rate is reduced based on the income schedules found in:

(a) ARM 42.19.402 for the property tax assistance program (PTAP) and for the Montana disabled veteran (MDV) property tax assistance program. Those schedules are located in ARM 42.19.402. ; or

(b) ARM 42.19.404 for the Montana disabled veteran (MDV) property tax assistance program.

(3) through (5) remain the same.

AUTH: 15-1-201, 15-6-302, MCA

IMP: 15-6-134, 15-6-240, 15-6-301, 15-6-302, 15-6-305, 15-6-311, 15-6-312, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.19.405 to consolidate the PTAP and MDV program descriptions for efficiency, and which reflect the department's proposed amendments to ARM 42.19.401 and 42.19.402. The department is updating the implementing citations in accordance with 2-4-305, MCA, to correspond with the rule amendments.

42.19.407 INTANGIBLE LAND VALUE PROPERTY TAX ASSISTANCE PROGRAM FOR RESIDENTIAL PROPERTY (1) through (5) remain the same.

(6) As described in 15-6-240, MCA, if the department's appraised value of the land is greater than 150 percent of the appraised value of the primary residence and improvements situated on the land, then the land is valued at 150 percent of the appraised value of the primary residence and improvements, subject to the following:

(a) remains the same.

(b) Parcels of land exceeding five acres in size do not qualify unless the department's appraised value of the first five acres which support the primary residential improvements is greater than 150 percent of the appraised value of the primary residence and improvements situated on the land. In such cases, any land in excess of five acres remains valued at its market value.

(7) and (8) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-240, 15-6-301, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.19.407 to insert language in (6)(b) clarifying how the department is applying the exemption to parcels of land that are over five acres in size but would have met all

other criteria for qualification had the parcel been only five acres. The department believes the proposed amendment is necessary because statute does not clearly address how the exemption is applied to parcels of land greater than five acres. The proposed amendment provides that the exemption is only applied to five acres regardless of the parcel's size.

4. The department proposes to repeal the following rules:

42.19.403 MONTANA DISABLED VETERAN (MDV) PROPERTY TAX ASSISTANCE PROGRAM

AUTH: 15-1-201, 15-6-302, MCA

IMP: 15-6-301, 15-6-302, 15-6-311, 15-6-312, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.19.403 because the department has determined that separate rules for the PTAP and MDV programs are unnecessary and the department's proposed amendments to ARM 42.19.401 to consolidate this similar subject matter make for more efficient rule organization.

42.19.404 INFLATION ADJUSTMENT FOR MONTANA DISABLED VETERAN (MDV) PROPERTY TAX ASSISTANCE PROGRAM

AUTH: 15-1-201, MCA

IMP: 15-6-301, 15-6-311, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.19.404 because the department has determined that separate rules for the PTAP and MDV programs are unnecessary and the department's proposed amendments to ARM 42.19.402 to consolidate this similar subject matter make for more efficient rule organization.

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: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than December 13, 2019.

6. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. The Department of Revenue 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, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject

matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

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

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

/s/ Todd Olson

Todd Olson
Rule Reviewer

/s/ Gene Walborn

Gene Walborn
Director of Revenue

Certified to the Secretary of State October 29, 2019.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.20.683 pertaining to) PROPOSED AMENDMENT
specialty and unique crops; additional)
requirements for agricultural land)
classification)

TO: All Concerned Persons

1. On December 5, 2019, at 10:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue 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, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 15, 2019. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

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

42.20.683 SPECIALTY AND UNIQUE CROPS; ADDITIONAL REQUIREMENTS FOR AGRICULTURAL LAND CLASSIFICATION (1) For the purpose of this rule, the term "specialty and unique crops" includes, but is not limited to, the agricultural products provided in (3)(a) through (g).

~~(1) (2) An applicant applying~~ A landowner may apply for agricultural land classification for specialty and unique crops. To receive this agricultural land classification, the landowner must prove that: ~~the land indicated in the application actually produced an agricultural crop as defined in 15-1-101, MCA, and that the crop produced \$1,500 in annual agricultural income based on parcel size as set forth in ARM 42.20.620. The agricultural land, indicated in the application, must actually produce the crop(s).~~

(a) the agricultural products they grow, raise, or produce meet the definition of agricultural in 15-1-101, MCA;

(b) the agricultural products are grown, raised, or produced by the land referenced in the agricultural land classification application; and

(c) the marketing of agricultural products, other than livestock grown, raised, or produced by the land results in at least \$1,500 annual gross income, as described in ARM 42.20.620.

(3) In addition to the agricultural land classification criteria provided in ARM 42.20.620 and (1), agricultural products grown, raised, or produced by the land must also meet applicable specialty and unique crops requirements.

(2) (a) ~~P~~poultry or game birds must be raised in an unconfined area and receiving ~~receive~~ their general dietary requirements from the land. ~~Game birds raised in a building, cage, or enclosed area, are considered activities that are not supported and produced by the land. Land used for~~ For poultry and game birds raised in this manner a building, cage, or enclosed area, the land is are not eligible for consideration as for agricultural land classification.

(3) (b) ~~T~~he sale of honey and other products from bees ~~will be~~ is considered agricultural income. ~~For valuation as agricultural land, if the~~ landowner of the land must provide proof that the ~~or the~~ landowner's business is registered with the Montana Department of Agriculture as an apiary.

(4) (c) ~~T~~he sale of biological control insects ~~will be~~ is considered agricultural income if the insects are supported solely from ~~noxious weeds~~ vegetation grown on the land ~~indicated on the application.~~

(5) (d) A a garden or produce farm ~~must grow if the plants or~~ and nursery stock in the ground to be considered agriculture if the provisions of (6) are met. ~~Plants not grown in or nourished by the land are not considered agricultural production and the income generated by those plants is not considered agricultural income for the purposes of this rule~~ are grown in and nourished by the land, and are managed using industry standard management practices, including weed and grass maintenance, fencing, and a watering system. Examples of ineligible plants include, ~~but are not limited to, trees grown in self-contained pots or burlap bags placed in or on the ground and plants grown in flats located in a greenhouse.~~

(6) ~~For valuation as agricultural land, the owner of land used as a garden or produce farm must provide proof that the garden or produce farm:~~

(a) ~~is cultivated for weeds and grass; and~~

(b) ~~is managed according to accepted husbandry practices, including necessary fencing and a watering system.~~

(7) (e) ~~The sale of a~~ Christmas trees farm if ~~will be~~ considered agricultural income ~~if the provisions of (8) are met.~~

(8) ~~For valuation as agricultural land, the~~ landowner of land must provides proof that all trees are:

(a) ~~cultivated under accepted, proven husbandry~~ industry-standard management practices; and

(b) ~~sheared on a regular basis.~~

(9) ~~The property owner must include with the application documentation sufficient to prove that the property produces and the owner or the owner's agent markets at least \$1,500 in gross annual income.~~

(10) (f) A a fruit tree orchard ~~will be~~ considered agriculture if the provisions of ~~(11) are met.~~

(11) ~~For valuation as agricultural land, the~~ landowner of land must provides proof that the orchard is maintained using accepted fruit tree husbandry industry-standard management practices including pest and disease control, wildlife control fencing, weed and grass maintenance, and a watering system.

~~(12) The property owner must include with the application documentation sufficient to prove that the orchard produces and the owner or the owner's agent markets at least \$1,500 in gross annual income once the trees reach production maturity.~~

~~(13) (g) A a vineyard shall be considered agriculture if the provisions of (14) are met.~~

~~(14) For valuation as agricultural land, if the landowner of land must prove provides proof that:~~

~~(a) the vineyard is maintained for using industry-standard management practices, including vine pruning, weeds and grass; maintenance, pest and disease control, and~~

~~(b) all vines are pruned; and~~

~~(c) the vineyard is maintained with accepted husbandry practices, including trellising and staking.~~

~~(4) As provided in 15-7-202, MCA, land used to grow, raise, or produce the agricultural products in (3)(e), (f), and (g) is eligible for a five-year provisional agricultural land classification. A landowner must submit an application for provisional agricultural land classification on a form provided by the department.~~

~~(15) (5) Land qualifying under this rule used to grow, raise, or produce agricultural products provided in (3)(a) through (g) that qualifies for agricultural land classification is valued at the highest productivity level of non-irrigated continuously cropped farm land, as established by the department provided in ARM 42.20.681.~~

AUTH: 15-1-201, MCA

IMP: 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.683, for the department to implement amendments to 15-7-202, MCA, made under Senate Bill 69 (SB 69) by the 2019 Montana Legislature. Section 15-7-202, MCA, generally provides eligibility criteria for valuation of land classified as agricultural. SB 69 revised agricultural classification laws providing provisional agricultural classification for certain orchards, vineyards, and Christmas tree farms. The department also proposes several amendments for consistency with current department practices and terminology, which have changed since the rule was created under MAR Notice No. 42-2-924 from the larger rule regarding agricultural land valuation for land totaling less than 160 acres found in ARM 42.20.620.

The department proposes amending the rule's catchphrase to reflect amended rule content and in compliance with ARM 1.2.214.

The department proposes (1) which is necessary to clarify that specialty and unique crops are included under the broader term of "agricultural products" that are grown, raised, or produced for commercial purposes and defined as "agricultural" in 15-1-101, MCA.

The department also proposes revising text in proposed (2) to identify the landowner as the applicant completing an agricultural land classification application and clarifies the necessity for meeting core agricultural land classification eligibility requirements with references to 15-1-101, MCA and ARM 42.20.620. These

amendments are necessary for improved organization, incorporation of other authorizing or supporting authorities, and is intended to be easier to reference for the taxpayer.

The department proposes reorganizing for consistency, and restating using more plain language, the list of specific requirements language in proposed (3)(a) through (g), which are currently provided in 11 rule sections. Changes are necessary for improved organization of content since the agricultural products described in (3)(a) through (g) must all meet the classification requirements provided in ARM 42.20.620 and (2) in addition to the applicable, crop-specific requirements provided in (3). The department also proposes removing outdated subsection terminology in favor of "industry-standard management practices." This is necessary to reflect that industry practices change over time and the department will not have to amend its rules for antiquated terminology.

In proposed (3)(d) the department restates the requirements for gardens, produce farms, and nurseries, which is necessary for brevity and increased clarity, following amendments to 15-7-202, MCA, in SB 69. The department also proposes to remove rule text from the last sentence regarding ineligible plants grown in flats located in greenhouses. This change is necessary because all plants grown in flats are ineligible for specialty crop classification; the location of the flats is irrelevant.

The department proposes (4) to identify the agricultural products grown, raised, or produced by the land in (3)(e), (f), and (g) that are now eligible for provisional agricultural land classification for five years to allow crops to reach salable maturity, as provided in the SB 69 amendments to 15-7-202, MCA.

Finally, the department proposes (5) to clarify that specialty and unique crops, including the agricultural products provided in (3)(a) through (g) that are grown, raised, or produced by the land are valued using the highest productivity level of non-irrigated continuously cropped farm land. This amendment is necessary for increased clarity and consistency with the rule's statutory authority. The amendment is also necessary for internal consistency with ARM 42.20.681.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., December 13, 2019.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue 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, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in

number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on October 7, 2019 and on October 28, 2019.

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

/s/ Todd Olson

Todd Olson
Rule Reviewer

/s/ Gene Walborn

Gene Walborn
Director of Revenue

Certified to the Secretary of State October 29, 2019.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
2.21.1931, 2.21.1932, 2.21.1933,)
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 August 23, 2019, the Department of Administration published MAR Notice No. 2-21-584 regarding a public hearing on the proposed amendment of the above-stated rules at page 1195 of the 2019 Montana Administrative Register, Issue No. 16. The public hearing was held September 12, 2019.

2. The department has amended ARM 2.21.1931, 2.21.1933, 2.21.1934, 2.21.1937, 2.21.1939, 2.21.1940, and 2.21.1941, as proposed.

3. The department has amended ARM 2.21.1932 and 2.21.1938 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

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

(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) through (7) remain as proposed.

(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.

(9) remains as proposed.

AUTH: 2-18-1305, MCA

IMP: 2-18-1303, MCA

2.21.1938 ELECTIONS (1) through (5) remain as proposed.

(6) If at least 25% of the members of the group request an annual election, members of a group may ~~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.
- (7) through (9) remain as proposed.
- (10) If no group members or less than 25% ~~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

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

COMMENT #1: A commenter suggested removing the qualifier, "as amended" that follows each federal citation in ARM 2.21.1932(1) and (8) because the amended federal provision does not currently exist. The cited federal provision is consistent with statutory citations in the corresponding MCA statutes.

RESPONSE #1: The department agrees and amends ARM 2.21.1932(1) and (8) to reflect the removal of the qualifier.

COMMENT #2: A commenter asked for clarification on the 30-day notice requirement in ARM 2.21.1933(2)(g).

RESPONSE #2: Pursuant to ARM 2.21.1933(2)(g), the employer must notify group members 30 days before the group's anniversary date of the group's right to vote. The department believes the employer is the appropriate entity to track group anniversary dates and ensure group members have notice of their right to vote.

COMMENT #3: Pursuant to ARM 2.21.1937(4), a commenter asked for clarification regarding the 25% threshold used to determine the highest paid group of employees.

RESPONSE #3: The rules apply to any public employer within Montana that elects to participate in the Montana VEBA HRA. The pool of employees from which the top 25% highest paid are ranked includes all employees of that employer.

COMMENT #4: Pursuant to ARM 2.21.1938(1), a commenter requested clarification on the number of employees who can request a vote to form a new group. The commenter suggested changing the 25% threshold to a majority of employees.

RESPONSE #4: Section 2-18-1310(1), MCA, provides that an employer may, if requested by least 25% of the employees, facilitate an election to form a new

group. Changing the 25% threshold to a majority would violate this statute. The department therefore cannot make this change.

COMMENT #5: A commenter asked how unions receive notice of an upcoming vote.

RESPONSE #5: If a group includes a mix of union and non-union members, an employer typically gives advance notice of an upcoming group vote to the union. After the voting period concludes and the results are known, the employer will execute a memorandum of understanding with the union if the group includes a mix of union and non-union members.

COMMENT #6: A commenter asked whether a group must vote annually if less than 25% request a vote.

RESPONSE #6: The employer is required pursuant to ARM 2.21.1933(2)(g) to notify group members 30 days before the group's anniversary date so group members can vote. Group members are not required to vote but cannot change group structure or contribution sources or disband a group without a vote. Meeting the 25% threshold is not required. If one or two group members request an election to vote for a change in group structure or contribution sources, neither the statute nor the rule prevents an employer from facilitating an election. The department agrees additional clarification is necessary and amends ARM 2.21.1938(6) to reflect this clarification.

COMMENT #7: A commenter requested the rule specify the date on which employees can request a vote to form a new group after disbanding an existing group.

RESPONSE #7: If the majority votes to disband a group, employees in that work unit can request another election at any time within the following 12 months. The department declines to set a specific election date, so employees retain the rule's current flexibility to request another election at a time within the 12-month period that best accommodates those employees.

COMMENT #8: Concerning ARM 2.21.1938(8), a commenter requested clarification on whether another election should occur 12 months from the date of the election or 12 months from the effective date of the vote.

RESPONSE #8: The department proposed 12 months from the date of the election. The effective date of a vote for an existing group is the day following the group's anniversary date. Waiting to conduct an election until 12 months after the effective date of a prior year's vote is too late. By that time, the group's anniversary date has passed, and the existing group structure and contribution sources must remain in place for another year.

COMMENT #9: Concerning ARM 2.21.1938(10), a commenter requested clarification on the requirement for an annual vote and what constitutes an "insufficient amount" of employees.

RESPONSE #9: The department agrees the term "insufficient amount" is vague and amends ARM 2.21.1938(10) as above. The department refers the reader to the response to comment #6 for a response to the potential of a required annual vote.

COMMENT #10: Concerning ARM 2.21.1940, a commenter requested clarification on the permitted contribution sources for state employers.

RESPONSE #10: ARM 2.21.1940 applies to all public employers in Montana. There is no separate rule or policy for public employers other than the state. Contribution sources for the Montana VEBA HRA must be permitted by state statute and federal law. Section 2-18-1311, MCA, references accrued sick leave and any other contribution source not otherwise prohibited by law. Annual leave, while not specifically referenced in 2-18-1311, MCA, is not prohibited by state or federal law, and may be a contribution source. Contribution sources must be benefits earned equally by all group members. For example, comp time (compensatory time off) is a benefit limited to exempt employees, so comp time cannot be a contribution source. Conversely, sick leave is a benefit for any employee who meets criteria in 2-18-1311, MCA, so accrued sick leave can be a contribution source.

COMMENT #11: Concerning ARM 2.21.1932(8), a commenter requested modifying the definition of a separation from service to only voluntary separations from service.

RESPONSE #11: IRC section 501(c)(9) and related federal guidance governing the Montana VEBA HRA prohibits individual choice. After a Montana VEBA HRA group is established, all employees who meet the eligibility requirements for that group are group members. The department obtained IRS approval to further limit eligible employees within a group to only those eligible to retire, if at least five employees who are eligible to retire would be in the group. The termination of a group member's employment is the triggering event for a group member to become a participant. There is no difference between the voluntary termination of a group member (e.g., retirement) and the involuntary termination of a group member (e.g., member was fired). If the employee was a member of a group before the triggering event of employment termination – whether voluntary or involuntary – that employee is a participant after termination. Permitting a fired group member to cash out accrued leave when that group member is otherwise eligible to participate in the Montana VEBA HRA is impermissible individual choice.

COMMENT #12: A commenter suggested that if the group size became less than five group members after the retirement of one group member, the group should automatically disband.

RESPONSE #12: As stated in the response to Comment #11, IRC section 501(c)(9) and related federal guidance governing the Montana VEBA HRA does not permit individual choice. Allowing a group to automatically disband because group size decreases to four following the retirement of one group member qualifies as impermissible individual choice. Federal regulations require the structure of a group to be established by a group of employees, not by one individual employee.

ARM 2.21.1933 accommodates individual employee need to the extent legally permissible by authorizing as few as five employees to establish a group. A group can be formed from a work unit such as a bureau instead of an entire agency. Group membership can be limited to only those eligible to retire within the work unit. Therefore, the flexibility of ARM 2.21.1933 permits employees to structure a group to meet the needs of as few as five members.

Administrative practice affirms the right to participate in the Montana VEBA HRA if a group member experiences the triggering event of termination of employment within the year following a vote. During that one-year period, group dynamics can change multiple times. A retirement can decrease group size to less than five members. Conversely, group size can remain the same or increase if other employees meet eligibility requirements to become a group member. For example, if the employee hired to replace a retiring employee transfers from another agency or public employer and is eligible at the time of transfer, that employee is a group member. Administrative practice allows a second eligible group member to become a participant if the group member retires during that one-year period when the group has less than five members. If group size is less than five at the time of the next annual election, remaining group members can disband the group, or continue the group with the same structure for another year. Changing group structure requires a vote of five group members.

COMMENT #13: A commenter requested clarification on the difference between a member and a participant.

RESPONSE #13: Participant describes a group member who separated from service and completed the steps to establish an account in the Montana VEBA HRA. Member describes an active employee who votes annually with other employees to establish a group or change the structure and contribution sources of an existing group. The department took this approach because in educational presentations throughout state government and for other public employers in Montana, including 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 between active employees and former employees with respect to the Montana VEBA HRA. Current administrative procedures for the Montana VEBA HRA should not change. Those procedural changes were adopted in 2013 to comply with federal Affordable Care Act requirements for health reimbursement arrangements. Proposed rule changes are intended to conform these rules to the existing administrative procedures.

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 October 29, 2019.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 2.59.1738 regarding renewal)
fees for mortgage brokers, lenders,)
servicers, and originators)

TO: All Concerned Persons

1. On September 20, 2019, the Department of Administration published MAR Notice No. 2-59-590 pertaining to the proposed amendment of the above-stated rule at page 1545 of the 2019 Montana Administrative Register, Issue Number 18.

2. No comments were received.

3. The department has amended ARM 2.59.1738 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 October 29, 2019.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On July 5, 2019, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-515 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 919 of the 2019 Montana Administrative Register, Issue Number 13.

2. The commission has adopted the above-stated rule as proposed: New Rule I (12.6.1010).

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

COMMENT #1: The commission received a comment in support of the proposed rule.

RESPONSE #1: The commission appreciates the participation and support in this rulemaking process.

COMMENT #2: The commission received a comment regarding using two-way communication for the purposes of saving lives and injured persons.

RESPONSE #2: The rule contains a section that specifies that the prohibition of two-way communication while hunting is exempt if it is needed for safety purposes.

COMMENT #3: The commission received a comment questioning if hunting partners are able to share their GPS locations with each other for safety purposes.

RESPONSE #3: Hunters using GPS monitors to keep track of the location of their hunting partners for safety purposes are allowed to do so under the section of the rule that exempts using two-way communication for safety purposes.

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

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

Certified to the Secretary of State October 29, 2019.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
12.6.301 pertaining to tagging)
carcasses of game animals)

TO: All Concerned Persons

1. On July 5, 2019, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-516 pertaining to the proposed repeal of the above-stated rule at page 921 of the 2019 Montana Administrative Register, Issue Number 13.

2. The commission has repealed the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

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

Certified to the Secretary of State October 29, 2019.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On July 5, 2019, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-517 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 923 of the 2019 Montana Administrative Register, Issue Number 13.

2. The commission has adopted the above-stated rule as proposed: New Rule I (12.6.1005).

3. No comments or testimony were received.

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

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

Certified to the Secretary of State October 29, 2019.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rule I and the repeal of ARM	)	REPEAL
18.7.232 pertaining to Electronic)	
Utility Permitting for Right-of-Way)	
Occupancy)	

TO: All Concerned Persons

1. On August 9, 2019, the Department of Transportation published MAR Notice No. 18-177 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 1145 of the 2019 Montana Administrative Register, Issue Number 15.

2. The department has repealed the following rule as proposed: ARM 18.7.232.

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 I (18.7.207) ELECTRONIC UTILITY PERMIT APPLICATION PROCESS (1) An applicant must apply for a utility encroachment permit or utility occupancy agreement (collectively Utility Permit) through the department's Utility Permitting Administration System (UPAS), through the department's website at www.mdt.mt.gov; or mdtupas.com, for the installation of any utility facility on right-of-way under the jurisdiction of the department. The Utility Permit conditions and department's Montana Right-of-Way Utilities Manual set forth the procedures and conditions for all utility installations statewide. The department may impose additional restrictions or requirements for Utility Permits. The following conditions apply to all Utility Permit applications:

(a) and (b) remain as proposed.

(c) The utility owner must provide the name of any contractor or subcontractor who will be conducting the installation, including contact information and an executed construction agreement if required by the department, within 60 days after the utility owner retains the contractor or subcontractor, or prior to commencement of work whichever occurs earlier;

(c) through (e) remain as proposed but are renumbered (d) through (f).

(2) Each application must:

(a) through (c) remain as proposed.

(d) include authorization, if any, for the utility owner's contractor to obtain a Utility Permit on the utility owner's behalf. All terms and conditions set forth in the Utility Permit apply to the contractor; and

~~(e) include the name of any subcontractor who will be conducting the installation, the subcontractor's contact information, and an executed subcontractor's construction agreement if required by the department; and~~

(f) remains as proposed but is renumbered (e).

(3) through (4) remain as proposed.

(a) A Utility owner may:

(i) Submit ASCE standard survey-grade Global Positioning System (GPS) as-built surveys certified by a licensed professional engineer (PE) or professional land surveyor (PLS) showing the facility type, function, size, configuration, material, location, elevation, and any special features such as encasement, manholes and valves, or as otherwise specified in the Utility Permit special conditions. The ASCE standard certified survey data will not be subject to department inspection and audit unless discrepancies are noted by the department; or

(ii) through (e) remain as proposed.

(5) Utility owners performing maintenance of permitted utility facilities occupying right-of-way under the jurisdiction of the department must apply for a utility Notification Permit (Notification Permit). A Notification Permit application must be submitted electronically through UPAS through the department's website at mdt.mt.gov or mdtupas.com. Notification permits are subject to all applicable UPAS requirements and the following conditions:

(a) and (b) remain as proposed.

(c) the department will require the utility owner's construction forces or a utility contractor performing utility maintenance work in the right-of-way without a Notification Permit to vacate the right-of-way immediately until a Notification Permit has been issued by the department, including any required traffic control plan; and

(d) utility work performed in response to an emergency does not require a prior Notification Permit, but a Notification Permit application must be submitted as soon as practicable after the work is completed.

(6) remains as proposed.

AUTH: 60-4-402, MCA

IMP: 60-4-402, 60-4-403, MCA

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

NEW RULE I(1)

COMMENT #1: One comment was received stating New Rule I(1) establishes a new, electronic utility permitting process and requested a "soft launch" until May 1, 2020 at the start of the 2020 construction season. The comment stated a "soft launch" would afford both MDT and utility applicants the opportunity to test and troubleshoot any problems during the implementation. Delaying implementation to May 2020 also will not affect the remaining 2019 construction season and projects already underway.

RESPONSE: MDT agrees a delayed effective date before the UPAS application process becomes mandatory will allow time for additional training and troubleshooting. MDT will adopt New Rule I with a delayed effective date until January 1, 2020. MDT will offer training sessions on specific dates in October-December and will continue to offer ongoing training after the initial UPAS launch. With the effective date delayed until January 1, 2020, all utility permit applicants may use the existing paper process, with no as-built survey data requirement, until the January 1, 2020 effective date. Any applicant seeking utility permits for the 2020 construction season may apply under the existing permit application process or the UPAS process until January 1, 2020.

COMMENT #2: MDT staff commented New Rule I(1) and (5) should reference the web address at which UPAS may be accessed.

RESPONSE: MDT will amend New Rule I(1) and (5) as shown to insert "mdtupas.com" as a web address for UPAS application access.

NEW RULE I(2)(a)

COMMENT #3: One comment was received stating New Rule I(2)(a) which requires utilities to respond to MDT's request for additional permit application information is reasonable, but the rule should be amended to "commit the Department to approve a completed application within 30 days of receipt of the application or the application is deemed granted if the Department fails to approve the application within 30 days of receipt."

RESPONSE: MDT acknowledges the comment in support of the New Rule I(2)(a) requirement for permit applicants to respond to additional information requests within 30 days. MDT notes proposed New Rule I did not contain a proposed timeline for MDT approval of completed applications, thus the rule comment regarding this type of timeline is outside the scope of this proposed rule notice.

NEW RULE I(2)(d) and (e)

COMMENT #4: Two comments were received stating New Rule I(2)(d) and (e), requiring names of utility owner's contractor and subcontractor, should be removed, as the installation contractor may not be selected and named prior to submitting the application for a permit. The comments stated the utility owner typically tries to get all permits before awarding a project to a contractor. The comments recommended amending the subsections to allow utility applicants to submit contractor information to MDT within 60 days of the utility owner retaining a contractor.

RESPONSE: MDT agrees utility owners may or may not select contractors or subcontractors until after a utility permit has been obtained. MDT will therefore delete New Rule I(2)(e) requiring submission of contractor names as part of the application, and amend New Rule I(1)(c) as shown to state a utility owner must provide contractor and subcontractor information within 60 days of retaining a

contractor or subcontractor, or prior to commencement of work whichever occurs earlier. No amendments to New Rule I(2)(d) are necessary, as that subsection only requires disclosure of the contractor's name as authorization for a contractor to obtain a utility permit in the utility owner's name, which would not occur unless the contractor had an already-established contract with the utility owner.

NEW RULE I(2)(f)

COMMENT #5: One comment was received stating New Rule I(2)(f) stating applications must be accompanied by a \$100 convenience fee, which will produce \$70,000 of new revenue to MDT, will cause small utilities to incur significant costs to comply with the new rule. The comment stated some utilities will incur at least that much expense to purchasing new equipment and dedicating personnel to comply with New Rule I. The comment recommended the convenience fee apply on a per-project basis, so utilities will not face multiple fees for the same construction project.

RESPONSE: MDT notes the "convenience fee" being charged for UPAS applications does not produce revenue for MDT. Instead, the convenience fee is charged to allow payment for electronic government services on a State of Montana website. Section 2-7-1103, MCA allows the State to charge convenience fees and allows private entities to collect fees to provide funding for the support and furtherance of electronic government services. The statute allows a minimal convenience fee to be charged to applicants, as collected by the UPAS vendor, to provide funding only for use of this electronic government service. No fee is being charged or collected by MDT for issuance of utility permits.

NEW RULE I(4)

COMMENT #6: One comment was received stating the New Rule I(4) requirement for GPS "as built" surveys certified by a Professional Land Surveyor (PLS) or a Professional Engineer (PE) is not correct. The comment stated the as-built surveys required by MDT fall under a PLS not a PE licensure statute so PEs risk inappropriately stamping projects that are under the jurisdiction of a PLS. The comment stated MDT may be inadvertently putting PEs at risk of complaints against their license through the language of the permit.

RESPONSE: MDT notes 37-67-101(5), MCA allows the New Rule I type of as-built survey data to be provided as "engineering survey" by a PE. It is therefore allowable for a PE or a PLS to certify the required as-built survey data. MDT notes New Rule I does not require property ties, or filing of a Certificate of Survey, both of which would have to be certified or stamped by a PLS.

COMMENT #7: One comment was received stating New Rule I(4)(a)(i) and (ii) requiring GPS as-built surveys to be submitted as certified by a PE or PLS or submitted by a utility owner employee appear to stand alone with no correlation. The comment recommended inserting the word "or" between the subsections so a utility must comply with either (i) or (ii). The comment proposed amending the

language of (4)(a) to clarify (i) PE/PLS surveys are not subject to MDT inspection and audit unless discrepancies are noted by MDT and (ii) non-PE/PLS surveys are subject to MDT inspection. The comment also stated if MDT inspects non-PE/PLS surveys, any discrepancies should be presented to the utility for notice and opportunity to challenge MDT findings before incurring MDT's expense of a new survey. The comment stated it was asking for due process to challenge MDT's determination of a discrepancy.

RESPONSE: MDT agrees insertion of the word "or" between New Rule I(4)(a)(i) and (ii) was inadvertently omitted in the proposed rule notice. The rule will be amended as shown. New Rule I(4)(a) allows the utility owner to choose an option and decide whether to submit (i) as-built survey data stamped by a PE or PLS, without MDT audit and inspection, or (ii) as-built survey data certified by a utility owner authorized officer or employee, subject to MDT audit and inspection. If non-PE or PLS certified (4)(a)(ii) submissions are made, MDT may audit and inspect the installation and charge the utility owner for corrections to survey information. Survey data discrepancies noted by MDT would result in discussion of a corrective plan to be performed by the utility owner before MDT would undertake its own corrective work or charge the utility owner for corrective work.

COMMENT #8: One comment was received expressing concern with the cost and timing associated with PLS survey for "as built." The comment stated if this rule requires a PLS to be at every site before it is covered, utilities will incur costs and time.

RESPONSE: MDT notes New Rule I(4)(c) allows 90 days to submit as-built survey data, or a longer period if requested and justified by the utility owner. New Rule I does not therefore require a PE or PLS to be at every site, as the survey could be completed and submitted after installation is complete. See, *also*, Response to Comment #6. New Rule I(4)(a) does not require PE or PLS presence at a site or certification, as the utility owner may choose an option which requires neither.

COMMENT #9: Six comments were received asking MDT to provide the accuracy requirements for the "as built" survey in New Rule I(4) and (4)(a)(ii). The comments stated PEs may incur a risk of stamping projects with only locator equipment accuracy. The comments stated accuracy of locates using locator equipment (e.g., ELM only certifies for +/-18", whereas UPAS requirements are more stringent). The comments also stated using locator equipment for vertical depth is problematic (what if wire is not attached to the pipe). The comments also stated the only way to meet proposed requirements is to survey while the trench is still open. The comments also stated the utility owner would need to use MDT control to go on the MDT coordinate system and tie into control points on both sides of new installations to make certain they are using correct scale factors and vertical datum. Finally, the comments stated New Rule I(4) requires clarification on specific X, Y, and Z specifications and tolerances that MDT seeks from utilities.

RESPONSE: New Rule I (4) states the American Society of Civil Engineers (ASCE) standard guideline for recording and exchanging utility infrastructure data is adopted by reference. New Rule I requires utility owners to make their best effort with current technology to follow the ASCE standards. MDT also notes technical requirements of survey data will be contained in MDT's Utility Manual, which will reflect the current state of technology. If new technology and locator equipment is developed to allow for more accurate locations, the Manual may be updated to reflect the technology updates. The ASCE standards currently make provision for trenchless methods (e.g., accuracy level 7); however, if a trench method is being used, a physical survey is preferred, not after backfill. A utility owner may choose option 1 or 2 for as-built survey data (see *response* to Comment #6), and if option 2 is chosen, no PE or PLS certification is required, and accuracy level 7 may be submitted. MDT will approve non-certified as-built survey data if appropriate, but all non-certified submissions are subject to inspection, audit, and correction if necessary, at utility owner's cost. New Rule I (4) requires utility owners to follow ASCE standards to certify which accuracy level, including X, Y, and Z specifications and tolerances are being submitted for the subject utilities.

COMMENT #10: Two comments were received stating New Rule I(4) states the as-built surveys are to be "standard ASCE standard survey grade GPS," yet ASCE Table 1, defines seven different accuracy levels ranging from Level 1 to Level 7; thus it is not clear which level of "survey grade" New Rule I proposes. The comments also stated ASCE standard guideline is currently in draft form, so the comment requested clarification as to whether the draft is adopted as it is, or whether subsequent amendments, and presumably a final standard be "automatically" adopted by reference. The comments also requested information on when the ASCE standard will be released as final. The comments stated utilities may not be able to comply with "interim" drafts, so a utility may submit current ASCE standard data, but standards may change during permitting or construction, and it will not be clear which standard applies.

RESPONSE: New Rule I(4) requires use of ASCE standards, which are set for finalization in January 2020, which will coincide with the New Rule I effective date of January 2020. See response to Comment #8 for MDT's ability to update its Manual for updated standards.

COMMENT #11: One comment was received stating New Rule I does not explain how MDT contactors will be required to comply with the same ASCE guidelines, including Z coordinates, nor explain how MDT will use ASCE guidelines, nor how MDT plans to share such data with utilities.

RESPONSE: See response to Comment #8 on ASCE X, Y, and Z specifications. MDT notes proposed New Rule I did not contain requirements for sharing of data; thus the rule comment regarding this type of guideline is outside the scope of this proposed rule notice.

COMMENT #12: One comment was received stating New Rule I(4) ASCE level of accuracy might be impossible to obtain in remote areas with limited satellite coverage. The comment stated MDT would have to work with the utility to obtain the data.

RESPONSE: New Rule I requires the utility owner to certify the level of accuracy of the submitted survey data. If satellite coverage was not available, the utility owner would use a different level of accuracy for submission.

NEW RULE I(4)(d)

COMMENT #13: One comment was received objecting to New Rule I(4)(d), which states the department may reimburse a utility owner for PE or PLS certified as-built surveys, in its entirety. The comment stated the subsection conflicts with 60-4-403, MCA, wherein MDT must reimburse 75%. The comment also objected to use of the word "may" and to the language stating the reimbursement *only* applies to PE/PLS certified surveys.

RESPONSE: MDT notes New Rule I(4)(d) only addresses possible MDT reimbursement for costs associated with PE or PLS certified as-built survey data submissions, not MDT statutory requirements to pay 75% of utility relocation costs for qualifying federal-aid system construction. The statutory requirement would continue to be followed for relocation costs. New Rule I(4) only addresses reimbursement for PE or PLS certified as-built survey data submissions and does not address nor change MDT statutory utility relocation obligations in any way.

NEW RULE I(4)(e)

COMMENT # 14: One comment was received agreeing with New Rule I(4)(e), which requires utility owners to reimburse MDT costs incurred due to incorrect as-built surveys, stating utility applicants that submit significantly incorrect data should be held accountable for their errors. The comment stated the subsection should include a definition for "significant[ly] incorrect" and due process for notice and opportunity to cure (aka dispute process) earlier in the process. The comment stated the rule needs to be amended to allow for due process (good faith negotiated settlement) prior to imposition of costs to cure.

RESPONSE: New Rule I requires the utility owner to provide the accuracy level of the data. MDT will work with the utility owner if audit, inspection, or future project work encounters incorrect data to allow utility owner correction at its expense, or MDT correction with costs charged to utility owner. New Rule I(4)(e) uses the wording "significant[ly] incorrect" and "major deviations" to acknowledge MDT will not require corrections for all inaccuracies, especially minor deviations. MDT will work with the utility owners to determine the significance of any incorrect as-built survey information.

NEW RULE I(5)

COMMENT #15: Two comments were received on New Rule I(5) requirement for application for a Notification Permit prior to performing maintenance of permitting utility facilities on MDT right-of-way. The comments stated it is not feasible to comply with the requirement to file a notification permit prior to conducting all maintenance. The comments also stated it is impractical for emergencies and after hour calls to submit a utility notification permit before proceeding with necessary repairs. The comments requested an exemption for electric utilities based on public safety and restoring power to consumers. The comments did not see the point of submitting a notification permit after the work was completed.

RESPONSE: MDT agrees with the comment and will amend New Rule I as shown to allow emergency utility work to be performed without obtaining a notification permit in advance. New Rule I(5)(d) will require application for a notification permit as soon as practicable after emergency work is performed, to ensure MDT utility records are complete and accurate as to work performed at any time in the right-of-way.

5. The effective date for the adoption and repeal of the above-stated rules is January 1, 2020.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State October 29, 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 ADOPTION
Rules I through LXI pertaining to)
private alternative adolescent)
residential programs or outdoor)
programs (PAARP))

TO: All Concerned Persons

1. On August 23, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-890 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1309 of the 2019 Montana Administrative Register, Issue Number 16. On September 20, 2019, the department published an amended MAR Notice No. 37-890 at page 1606 of the 2019 Montana Administrative Register, Issue Number 18.

2. The department has adopted the following rules as proposed: New Rule I (37.99.101), III (37.99.106), IV (37.99.107), VI (37.99.110), VII (37.99.115), XII (37.99.125), XIV (37.99.127), XVII (37.99.134), XVIII (37.99.135), XX (37.99.137), XXI (37.99.138), XXIV (37.99.147), XXVI (37.99.149), XXVII (37.99.150), XXVIII (37.99.151), XXX (37.99.153), XXXI (37.99.159), XXXII (37.99.160), XXXIII (37.99.161), XXXIV (37.99.162), XXXV (37.99.163), XXXVI (37.99.164), XXXVII (37.99.170), XXXVIII (37.99.171), XXXIX (37.99.172), XLII (37.99.175), XLIII (37.99.176), XLIV (37.99.181), XLV (37.99.182), XLVII (37.99.201), XLVIII (37.99.202), XLIX (37.99.206), L (37.99.208), LI (37.99.209), LII (37.99.211), LIV (37.99.212), LV (37.99.213), LVI (37.99.214), LVII (37.99.215), LVIII (37.99.216), LIX (37.99.217), LX (37.99.218), and LXI (37.99.219).

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

NEW RULE II (37.99.102) PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: DEFINITIONS (1) "Adolescent" means any person between the ages of 10 and 48 19 years who is placed in a program by a parent/legal guardian. A program participant may be up to the age of ~~49~~ 20 if they are enrolled in an accredited secondary school.

(2) and (3) remain as proposed.

(4) "Correspondence search" means ~~opening, inspecting, and/or~~ reading a program participant's mail or inspecting the contents of a package.

(5) through (11) remain as proposed.

(12) "Mental health professional" ~~means an individual~~ must be 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) through (22) remain as proposed.

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 V (37.99.109) PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PROCEDURE FOR OBTAINING A LICENSE: ISSUANCE AND RENEWAL OF A LICENSE (1) through (6) remain as proposed.

(7) If all licensing requirements are met and the fee has been paid in full, the department ~~may~~ will issue a license for a period of up to three years.

(a) through (12) remain as proposed.

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 VIII (37.99.117) PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: ADMISSIONS (1) through (6) remain as proposed.

(7) The admissions policy may not limit contact with the program participant's family for ~~any duration of time~~ no more than 7 days after admission.

(8) through (10) remain as proposed.

(11) A program must ensure compliance of each participant's 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 (37.99.119) PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: DISCHARGE (1) remains as proposed.

(2) ~~Within ten business days of~~ At the time of discharge of a program participant from the program, a written discharge report must be completed, and include:

(a) through (j) remain as proposed.

(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~~ at the time 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. The program participant may be discharged to

individuals other than the parent/legal guardian with written consent from the parent/legal guardian prior to discharge.

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 (37.99.118) 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) through (d) remains as proposed.

(e) a statement describing the communication policy, which must include a minimum of one telephone contact per week, in addition to any therapeutic contact (family therapy); and

(f) transportation of the program participant to and from medical appointments and activities;

(f) through (j) remain as proposed, but are renumbered (g) through (k).

(2) and (3) remain as proposed.

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 (37.99.124) PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CASE PLAN (1) Each program must develop and implement a case plan for each program participant in care.

(2) through (6) remain as proposed.

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 (37.99.126) 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.

(a) A name-based criminal background check may be completed pending the results of the fingerprint background check. The department must receive the request for the fingerprint check and the results of the name-based check must be documented prior to the staff working at the facility.

(2) through (10) remain as proposed.

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 (37.99.132) PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PHYSICAL ENVIRONMENT (1) through (6) remain as proposed.

(7) The program must provide:

- (a) at least one toilet for every ~~four~~ eight program participants; and
- (b) one bathing facility for every ~~six~~ eight residents.

(8) through (13) remain as proposed.

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 (37.99.133) PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: LAUNDRY AND BEDDING (1) If a program processes its laundry on site, it must:

- (a) use ~~rooms~~ areas solely for laundry purposes;
- (b) through (3) remain as proposed.

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 (37.99.136) PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: FIRE SAFETY (1) The department adopts and incorporates by reference the current edition of the locally adopted Fire Code (FC) 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 local or state fire authority having jurisdiction ~~marshal~~ must annually certify a program for fire and life safety.

(3) Smoke detectors and smoke alarms must be installed and operated in accordance with the FC set forth in the locally adopted FC. ~~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 must be installed and operated in accordance with the FC. ~~in facilities with fuel-burning appliances or with attached garages must be installed per manufacture recommendations according to Section 4103.9, 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) remains as proposed.
- (b) no more than 75 feet travel distance apart ~~from each other~~;

(c) through (10) remain as proposed.

(11) The program must conduct at least one fire drill per quarter per each work shift. ~~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) through (d) remain as proposed.

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 XXII (37.99.145) PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CASE RECORDS (1) remains as proposed.

(2) The case record must include:

(a) through (f) remain as proposed.

(g) current custody and parent/legal guardianship documents or other documents verifying legal custody of the parent/legal guardian placing the program participant per program policy;

(h) through (m) remain as proposed.

(n) records of physical restraints and special or serious incidents;

(o) through (4) remain as proposed.

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 (37.99.146) PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CONFIDENTIALITY OF RECORDS AND INFORMATION (1) through (3) remain as proposed.

(4) Necessary information pertaining to the program participant must be disclosed when program staff are following mandatory reporting requirements as outlined in this rule and within the scope of an individual's license.

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 XXV (37.99.148) PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: GENERAL REQUIREMENTS FOR ALL ADMINISTRATORS, STAFF MEMBERS, AND VOLUNTEERS (1) remains as proposed.

(2) In addition to the specific requirements set out in this chapter, all staff working in a program must:

(a) be at least 24 20 years of age;

(b) and (c) remain as proposed.

~~(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) through (6) remain as proposed, but are renumbered (3) through (5).

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 (37.99.152) 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, ~~42~~ 16 program participants to one staff; and

(c) programs must have at least one awake night staff in each building housing program participants regardless of the number of participants.

(2) through (5) remain as proposed.

(6) Mental health professionals must be licensed as defined in this rule and be employed in sufficient number to meet the mental health needs of program participants as outlined in the program description.

(7) and (8) remain as proposed.

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 (37.99.173) PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: SEARCHES

(1) through (6) remain as proposed.

(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) procedures for operating the breathalyzer; ~~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 breathalyzer urinalysis is positive.

(8) through (10) remain as proposed.

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 (37.99.174) PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CONTRABAND AND POTENTIAL WEAPONS

(1) through (5) remain as proposed.

(6) ~~Firearms must not be allowed on the program's property. Guns and ammunition must be kept in locked storage with guns stored separately from the ammunition. Guns kept in vehicles must have a staff member present and be locked in the glove compartment or gun rack, must be unloaded, and ammunition must be kept locked in a separate location in the vehicle.~~

(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. A program participant must have one on one supervision when handling a weapon or gun.~~

(8) remains as proposed.

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 (37.99.183) 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) through (6) remain as proposed.

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 (37.99.210) 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) remains as proposed.

(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, ~~42~~ 16 program participants to one staff; and

(c) programs must have at least one awake night staff in each building housing program participants regardless of the number of participants.

(2) remains as proposed.

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

COMMENT #1: A commenter appreciates the thoughtfulness and work that went into drafting the proposed PAARP rules. While these will create additional work for

us it also creates increased accountability and transparency. A very positive step forward in ensuring safe quality treatment.

RESPONSE #1: The department acknowledges and appreciates the comment.

COMMENT #2: A commenter feels the need for these standards as well as sound regulatory oversight is long overdue and welcome by many of us that have devoted both our personal and professional lives towards working with this difficult adolescent population.

RESPONSE #2: The department acknowledges and appreciates the comment.

COMMENT #3: A commenter states the proposed rules in general appear appropriate and the commenter supports the adoption of the rules pursuant to legislative directive.

RESPONSE #3: The department acknowledges and appreciates the comment.

COMMENT #4: A commenter expresses appreciation for the time and consideration put into establishing a new set of rules. For the most part the rules seem in line with the previous PAAR rules and with a few modifications will provide a strong set of rules and guidelines to enable the department to assume the new role of regulating these programs.

RESPONSE #4: The department acknowledges and appreciates the comment.

COMMENT #5: We want to express our deepest gratitude at the transparency and clarity that DPHHS approached with the proposed changes. The dialogue has been open and collaborative and we are deeply grateful for the partnership.

RESPONSE #5: The department acknowledges and appreciates the comment.

COMMENT #6: A commenter states generally speaking the new rules are amenable and often closely aligned with the former rules.

RESPONSE #6: The department acknowledges and appreciates the comment.

COMMENT #7: A commenter thanks the department for doing everything it has done to bring on the PAAR programs.

RESPONSE #7: The department acknowledges and appreciates the comment.

COMMENT #8: We appreciate the work that has gone into providing regulatory oversight to programs in the state. We note the support the providers such as ourselves receive which then affirms to our clients, our staff members, and the public at large that safety, ethical, and effective treatment is a priority in Montana. We

generally view the rules and the changes as a great benefit in helping us in our mission.

RESPONSE #8: The department acknowledges and appreciates the comment.

NEW RULE II

COMMENT #9: Some commenters expressed concern regarding the definition of "adolescent" including an age range. Some commenters admit participants in the program are younger than the definition allows and others allow program participants 19 years of age to remain to finish high school. One commenter stated the term "adolescent" is not defined in any other department rule.

RESPONSE #9: The department disagrees with comments as the term adolescent is generally defined as beginning with the onset of physiologically normal puberty and ending when an adult identity and behavior are accepted. This period of development corresponds roughly to the period between the ages of 10 and 19 years. The department defines the term "youth" in other administrative rules and statutes. The rule text will be updated to reflect the age to be up to the age of 20 allowing program participants who turn 19 to remain in the program while attending school.

The department acknowledges programs may currently serve children younger than the age of 10. The department agrees to allow programs to continue to serve children currently placed in programs until either the individual reaches the age of 10 or discharges. Programs may not admit children younger than the age of 10 following the adoption of this rule.

COMMENT #10: A commenter asked if the definition of correspondence search includes observing clients opening their mail to reduce contraband.

RESPONSE #10: The rule text has been updated to remove the reference to opening and inspecting the contents of a package. This allows programs to inspect mail for possible contraband without the requirement of documenting every letter/package opened as a search. Programs will be required to notify parents of the search policy prior to placement including opening and inspecting mail for contraband.

COMMENT #11: One commenter disagreed with the reasonable necessity statement regarding the definition of physical restraint stating the definition does not state imminent threat.

RESPONSE #11: The department disagrees as the definition states physical restraint may be imposed only in emergency circumstances and only to ensure the immediate physical safety of the resident, a staff member, or other. The terms "immediate" and "imminent" are synonyms.

COMMENT #12: One commenter suggested the definition of "serious incident" include restraint and be included in negative licensing action.

RESPONSE #12: The department disagrees with the comment as a physical restraint may not be a "serious incident" that would require reporting or negative licensing action. If a physical restraint is conducted inappropriately by using excessive force and/or raise concerns or possible abuse or neglect, then the restraint would be considered a "serious incident" and must be reported.

COMMENT #13: A commenter states staff at these facilities are holding themselves out as professional counselors when they have no education or license. Every parent has the right to know what qualifications the staff member has that is caring for children.

RESPONSE #13: The department has included within the proposed rule a definition of "mental health professional" that means an individual licensed under current Montana rule. The department has added text to this rule that requires all mental health professionals to be licensed.

COMMENT #14: A commenter asked if it is okay to mention that our program offers support for teens in recovery, and education and support for teens at risk of becoming chemically dependent, as long as we are clear we are not providing primary chemical dependency treatment.

RESPONSE #14: Yes, programs may offer support as described in comment. Only programs that offer primarily chemical dependency treatment are required to be licensed as a chemical dependency facility under 50-5-201, MCA.

NEW RULE IV

COMMENT #15: One commenter finds it difficult to understand the State of Montana's decision to require a licensing fee nearly 8 times more than Idaho, 7 times more than Utah, and 3 times more than Arizona. The commenter asks for clarification as to the purpose of this drastic difference. The commenter questions whether this is a temporary condition given the State of Montana seeking unbudgeted funding within this fiscal year or if it is a long-term expectation.

RESPONSE #15: The fee structure for programs has not been changed from the previous regulations as set by the Private Alternative Adolescent Residential and Outdoor Program Board. The fee per Senate Bill 267 must be set commensurate with administrative costs required to issue a license. The department will continue to evaluate the administrative costs and either decrease or increase the fee depending on cost to operate the licensing program.

NEW RULE V

COMMENT #16: A commenter suggests an amendment to New Rule V(7) by changing "the department may issue a license" to "the department will issue a license."

RESPONSE #16: The rule text has been updated to reflect the change from "may" to "will."

NEW RULE VI

COMMENT #17: A commenter asks how the department will assess the requirement of programs using payments for the support of the program participant.

RESPONSE #17: The department will evaluate the appropriate use of funds for the support of program participants during the licensure renewal on-site inspections which may include interviews and documentation review.

COMMENT #18: Several commenters expressed concern with the department's ability to remove participants from the program without substantial proof of abuse or neglect or a process to determine the need to remove participants. Commenters are concerned that participants may be removed from a program based only on a phone call without reasonable grounds. Commenters are concerned program participants may misuse this requirement to attempt to get out of a program that they do not want to be at and requires them to follow age appropriate rules.

RESPONSE #18: The department acknowledges these concerns; however, under 41-3-202(5), MCA, the department may remove a child if from a safety assessment the department has reasonable cause to suspect that the child is suffering abuse or neglect, or under 41-3-301, MCA, when the department has reason to believe any child is in immediate or apparent danger of harm. Each determination will be made on a case-by-case basis and will be based on the facts known at the time. The department may summarily suspend a program's license as contemplated by 2-4-631, MCA, in emergency circumstances affecting health, safety, and welfare.

COMMENT #19: A commenter states there needs to be a process in place to swiftly respond to allegations of abuse, to immediately remove a participant from a program and interrupt his/her therapeutic process could have a detrimental impact on the child and his/her family. A process needs to be in place to safeguard the student from being able to truncate their therapy with an unfounded claim. The commenter states (3) of this rule is a process that is outlined and should also be included in (2).

RESPONSE #19: See Response #18. Section 2 of this rule allows the department to remove program participants for the safety and protection of the program participants. Section 3 allows the suspension or revocation of a license under certain circumstances. The rules address different circumstances and both are necessary.

NEW RULE VIII

COMMENT #20: Several commenters were concerned about how programs would verify legal authority to place or remove a program participant in situations that do not include divorce. One commenter suggests a signed document from parents could be used for verifying legal authority.

RESPONSE #20: The proposed rule requires programs to develop policy that would determine what verification is required. Verification could include a birth certificate with the placing individual's name or a divorce decree granting custody. The department agrees that a program can require parents/guardians sign an attestation stating they have the legal authority to place the program participant. This document may be used if no other form of verification is available.

COMMENT #21: Several commenters expressed concern that the admissions policy may not limit contact with a program participant's family for any duration of time after admission. One commenter suggested allowing programs to limit contact up to 1 week after admission.

RESPONSE #21: The department agrees given the nature of these programs limiting contact with parents for a short period of time after admission may be reasonable with parental consent. The rule text has been updated to allow programs to limit contact no longer than 7 days after admission.

COMMENT #22: A commenter states that as the proposed rule is written it could be interpreted to mean participants have unrestricted access to parents at all times and that is unreasonable policy. The commenter recommends setting up communication with families in advance of placement that are reasonable. Two additional comments were received regarding programs that did not allow enough contact with parents and/or had limits that were too extreme.

RESPONSE #22: The department does not agree that the proposed rule could be interpreted to mean participants have unrestricted access to parents. The programs are required to have a policy with guidelines for parental contact. The rule has been amended to allow programs up to 7 days to initiate contact with parent/guardian after admission. Additional rules are in place to require programs to have ongoing contact with parents in addition to therapeutic contact.

COMMENT #23: Two comments were received concerning programs denying contact with family for extended periods of time.

RESPONSE #23: See Responses #21 and #22.

COMMENT #24: Several commenters had concerns regarding Interstate Compact on the Placement of Children (ICPC) being applied to programs that accept placements from parents only.

RESPONSE #24: The department has determined that ICPC applies. The Association of Administrators of the Interstate Compact on the Placement Children's Regulation 4 requires compliance with the Interstate Compact on the Placement of Children for interstate placement of children into residential facilities.

NEW RULE IX

COMMENT #25: A commenter states the program is not required to have the discharge plan available to the parents at the time of discharge.

RESPONSE #25: The department agrees the rule does not require the discharge summary to be available at the time of discharge and has updated the rule text to reflect this change.

COMMENT #26: Some commenters expressed concern regarding the requirement that program participants may only be discharged to the parent/legal guardian. Commenters are concerned this would not allow parents to contract with a transportation company to pick up participants or for programs to discharge participants to a higher level of care if needed. A commenter states participants may require discharge to a higher level of care.

RESPONSE #26: The department agrees that a program should be allowed to discharge a program participant to individuals approved by the parents. The rule text has been updated to allow discharge with parental consent.

COMMENT #27: A commenter assumes the rule applies to minors under the age of 18.

RESPONSE #27: The commenter is correct. New Rule IX would not apply to program participants who have reached the age of 18 and choose to leave the program.

NEW RULE XI

COMMENT #28: Two commenters expressed concern about requiring the youth to participate in developing and signing the case plan stating that it is unreasonable for an oppositional defiant teen to sign a treatment plan. Commenters suggest the parent/legal guardian is the one that should be involved in and sign the case plan.

RESPONSE #28: The case plan is a document that details the goals and objectives that will assist the program participant and the family in overcoming the challenges that resulted in placement. It is imperative to have the program participants' involvement in this process as they should have the opportunity for input and ensure they are fully informed of what is expected of them while in placement. Signature of the program participant and parents/legal guardian indicates involvement in the process. If a program participant refused to sign the case plan the program may take the opportunity to discuss with the program participant, the reasons they

disagree with the plan and amend accordingly or simply document the program participant refused to sign. The department disagrees that it is unreasonable for an oppositional defiant teen to sign a treatment plan.

COMMENT #29: A commenter supports the intent of this rule. The commenter states program creates an initial treatment plan within seven business day focusing on immediate needs and then a more thorough master treatment plan is developed within 30 business days. Does the rule have some flexibility to allow this? If so, would it be okay to obtain program participant's and parent/guardian signatures on the more thorough master treatment plan instead of the 7-day initial plan?

RESPONSE #29: The commenter's current process for developing the initial case plan and master case plan falls within compliance of the proposed rules. The signatures of the program participant and parent/guardian must be obtained on both plans. See Response #28.

NEW RULE XII

COMMENT #30: A commenter supports the intent of the rule. The commenter asks if the rights and grievance policy is in the program handbook. Will it suffice if the program handbook is reviewed with the program participant and his/her parents, and a statement acknowledging the review of the handbook is signed?

RESPONSE #30: Signature of the program participant and parent/guardian acknowledging the review of the handbook with the rights and grievance policy included would be acceptable.

NEW RULE XIII

COMMENT #31: Some commenters expressed concern regarding the number of background checks and the requirement that results be received before staff work at the program. One commenter suggested only FBI and DPHHS background checks should be required. Commenters requested the rule to allow staff to complete initial training and job shadowing, while not allowing staff to be counted in the staffing ratio or to work alone pending the results of the background checks. Commenters were concerned about the time it takes to receive results of the fingerprint background check and that in the past they have never received the results or been notified by the board regarding eligibility for employment. The program assumed the individual was eligible if they did not hear anything.

RESPONSE #31: In order to adequately screen perspective employees, the program must complete a thorough background check. Without adequate background checks, the safety of youth could be compromised. It is necessary to include requirements for state and national sexual and violent offender background checks for programs to receive relevant information regarding an applicant who may pose a significant risk to the program participants served. Information obtained from these checks may not be available on the fingerprint background checks.

The department agrees with the time concerns programs have and not being able to hire individuals pending the fingerprint background results. The department has amended the rule to allow programs to hire staff pending the results of the fingerprint checks given a name-based check and all other background checks have been completed and the program has submitted the required information to the department to process a fingerprint background check.

The department has been collaborating with the Department of Justice on developing tools that will provide clear guidance on conducting fingerprint background checks. This information will be available prior to the implementation of this rule. This will include the department completing all background checks required in order to expedite the process for programs.

COMMENT #32: A commenter supports this rule and asks if there is anything the department can do to simplify and help expedite this process. The process can be time-intensive and very complicated, and delays can result in difficulties in maintaining appropriate and safe staff-to-participant ratios.

RESPONSE #32: See Response #31.

COMMENT #33: A commenter believes background checks are essential and inquired as to how providers will be made aware of the results in a timely fashion and how they will obtain checks from other states.

RESPONSE #33: Programs will be notified in writing by the department when results of background checks are received. See Response #31.

COMMENT #34: There should be language in this standard that demonstrates that the intention of this standard is to ensure client safety rather than to limit the interaction of the client with the larger community; this standard should also not hinder programmatic advocacy efforts that intend to reduce the stigma of our client population with our local community.

RESPONSE #34: The department disagrees with the language suggestions. The intent of the rule is to ensure the safety of program participants and does not limit interaction with the larger community. The rule is specifically for staff working with program participants.

NEW RULE XIV

COMMENT #35: A couple of commenters raised concerns regarding allowing program participants the right to report abuse and neglect as they have often made false allegations in order to be removed from the program. One commenter stated the student would view it as their "ticket out" of the program. One commenter suggested allowing more time to report in order to notify client and parents of need.

RESPONSE #35: The department disagrees with these comments. The safety of program participant is paramount. Program participants must have the ability to report abuse or neglect when seeking help. It is the responsibility of the department to investigate and determine the credibility of the complaint.

COMMENT #36: A commenter requested extending the 24-hour reporting requirement for instances that occurred in the past when a program participant is not at risk.

RESPONSE #36: Programs must report all allegations of abuse and neglect within 24 hours. It is the responsibility of the department to determine the level of risk to the program participant and need to investigate.

NEW RULE XV

COMMENT #37: A commenter believes the rule was clearly written to provide a high level of safety to program participants. The commenter strongly supports this intent and has the same goal at their program. The commenter further states that at times of high census they may not meet the bedroom square footage requirements. The commenter is requesting information on how they request consideration for modifications of this requirement under (13).

RESPONSE #37: The department will conduct on-site inspections of each facility and determine if modifications to this rule are appropriate. The department will take into consideration the level of care each program provides. Exceptions or modifications will be on an individual basis as the department will determine if the spaces provide the same level of safety to program participants.

COMMENT #38: A commenter would like clarification on this rule and asks the following questions: Are there specific procedures or steps programs need to take to be able to make "alternative arrangements" with respect to square-footage requirements? Will programs licensed prior to October 1, 2019 be "grandfathered" into such alternative arrangements? The commenter further states that the term "grandfathered into" was used loosely during DPHHS facility inspections this summer and presumably referred to the existing "Grandfather Clause" as it is practiced in contemporary law. The commenter recommends defining "Grandfather Clause."

RESPONSE #38: See Response #37. The department disagrees with allowing all programs licensed prior to October 1, 2019 to be "grandfathered in." It is the responsibility of the department during the site inspection and program review to determine the safety level of program participants is adequate at current licensed programs. All programs are not "grandfather in;" therefore the term does not need to be defined.

COMMENT #39: Three programs expressed concern regarding the requirement for program participants sharing a bedroom must be no more than 3 years in age apart. A commenter states there is no similar requirement in either the Youth Care Facility rules, or the Outdoor Behavioral rules. Commenters believe this requirement will create an unnecessary burden on smaller programs that might not have as many options and more limited space. Such requirement established an arbitrary criterion that serves no safety function but will result in limiting enrollment of otherwise eligible students. Commenters state rule will create more rooms which clients can hide, conceal, or conspire. Limiting the age gap of students per room may actually slow a student's growth while enrolled in the program. An older more responsible student can encourage and mentor a newer, younger, or less mature student.

RESPONSE #39: The department agrees that current rules for other facilities mentioned do not have this same requirement. Prior experience working with facilities that serve youth in need of an out of home placement indicates the need for such a requirement. Safety and supervision requirements are the responsibility of the program and should not be diminished in order to place more program participants in one bedroom. Exceptions may be granted to current programs depending on the quality of the supervision. While older youth may positively influence younger youth in many ways, the risk outweighs the benefit when it comes to sharing sleeping space.

Older more mature program participants may encourage and mentor others while participating in activities outside of the sleeping space. Placing younger adolescents with older ones places program participants in higher risk situations that are unnecessary.

COMMENT #40: A commenter believes the more bathrooms a facility has, the more security risk that is created as 90% of all self-harm occurs in the bathroom and shower areas. The rule requirement would more than double the bathrooms in the programs. The commenter recommends 1 bathroom/shower area for 10 program participants.

RESPONSE #40: Requiring an adequate amount of bathing and toileting rooms to accommodate the number of program participants does not increase security risk to program participants. The program is responsible for providing adequate supervision regardless of the number of rooms in the facility. Program participants must be afforded adequate privacy, and this may be inhibited by limiting the number of bathrooms. The rule text was changed to increase the number of toilets and bathing facilities to 8 per program participant.

COMMENT #41: Several comments were received regarding concerns for the square footage requirements per bedrooms and the number of program participants allowed per bedroom. Commenters state the more program participants allowed to share a room the safer the students are. The participants are more likely to inform staff of negative behaviors of other youth if more participants are in one room. Open space keeps program participants accountable for each other, helps them to learn to

work together, and it takes away a place to go and hide and get back into themselves.

RESPONSE #41: See responses #37, #38, and #39.

NEW RULE XVI

COMMENT #42: Two commenters expressed concern regarding the requirement that laundry be done in a room used solely for laundry purposes – in common area with everything else. One commenter asked if program participants can still do laundry.

RESPONSE #42: The department has revised the rule text to allow for areas used solely for the purpose of laundry rather than a room. The rule does not prohibit program participants from doing their own laundry.

NEW RULE XIX

COMMENT #43: The Montana Department of Justice Fire Prevention and Investigation Section suggests not citing a specific code or edition as not all localities adopt the same code and edition. Suggested language was included in comment.

RESPONSE #43: The rule text has been changed at the suggestion of the Montana Department of Justice State Fire Marshal's Office.

COMMENT #44: "The department adopts and incorporates by reference the occupancy designation/classification group R-3 of the International Fire Code." It appears from looking at section P2904 of the IFC that we will be required to have water irrigation throughout all living spaces. If this is correct, it will be a substantial investment, which they are prepared to make; however, it would take time. The program is requesting an extension.

RESPONSE #44: See Response #43. Programs will no longer be classified as group R-3. The state or local fire authority will determine occupancy designation and certify programs accordingly.

COMMENT #45: Programs are currently required to have an annual inspection by the local Fire Marshal. A commenter recommends and requests that the rule simply state that (1) a facility must pass an annual fire inspection by the local Fire Marshal (2) a facility must have a clear fire safety plan, a facility must conduct routine fire safety drills, (3) a facility must have adequate fire extinguishers tested and monitored on a weekly or monthly basis and (4) ongoing fire safety training, and have documentation recorded with the Department of Public Health and Human Services when received.

RESPONSE #45: See Response #44.

NEW RULE XXII

COMMENT #46: As previously noted, a commenter asked what sort of document would we ask a parent to produce, especially if parents have not been divorced.

RESPONSE #46: See Response #20.

NEW RULE XXIII

COMMENT #47: A commenter is concerned about the rule restricting the release of records and information to only those listed and not including suspected child abuse or neglect, duty to warn, runaways, and other circumstances.

RESPONSE #47: The department agrees the rule as proposed did not include additional circumstances which could be included in rule. The rule text has been amended to reflect the suggested language.

NEW RULE XXV

COMMENT #48: A commenter questions the legal authority to compel a staff member to have a medical exam under circumstances described in rule and questions if this is a violation of HIPPA. What would programs do if staff members refuse? Is refusal justification enough for termination?

RESPONSE #48: The department believes the commenter's concerns are valid and has removed this requirement from rule.

COMMENT #49: Some comments have been received concerning the requirement for staff to be at least 21 years of age and required to have a high school diploma or GED. One program states they have individuals at the high school and college level that have requested to volunteer and perform internships with their organization.

RESPONSE #49: The department partially agrees with the commenters; however, the department believes that a reasonable business necessity exists for the age limitation. The rule text will be amended to require staff to be at least 20 years of age. Many programs serve individuals who are over 18 years of age. In order for staff to not be undermined by individuals their same age, the department made the age requirement to be 20.

COMMENT #50: A program requests a variance for current staff members that do not have a GED or high school diploma.

RESPONSE #50: The department acknowledges programs may currently employ individuals who do not have a GED or high school diploma. The department agrees to allow programs to continue to employ these individuals until their termination. Programs may not hire staff without a GED or high school diploma following the adoption of this rule.

COMMENT #51: A commenter is concerned the rule would prohibit volunteers coming to the program and speaking to program participants.

RESPONSE #51: Guest speakers are not considered volunteers and would not be prohibited from speaking to program participants. Programs must have a policy regarding volunteers that should exempt guest speakers.

NEW RULE XXIX

COMMENT #52: Protecting the safety of the program participants is paramount so program supports the intent of this rule. A commenter states program is a "step down" from more intensive, often hospital-based, adolescent programs. Program does not admit students requiring proposed minimum staffing levels. Is there any flexibility in the staffing ratios identified in this rule based off of acuity and if we can demonstrate to the department that sufficient staff are employed to meet the supervision needs of the program participants we serve?

RESPONSE #52: The department agrees that the safety of the program participants is paramount. Program participants sent to these programs need a structured program and are experiencing some sort of emotional, behavioral, or learning problems and have a history of failing academically, socially, or emotionally at home or in less structured traditional settings. Many programs have stated they do not provide hospital level of care, nor do they take children placed by the state in other types of facilities currently licensed by the department. In listening to the comments provided at the hearing on September 12, 2019, and reading the written comments submitted, the needs of these program participants are comparable to the children placed in youth care facilities. Some commenters suggest these programs are very similar while others suggest they are much different and suggest they should be held to a lower standard since parents choose to place their children with them. Programs should not be allowed to provide a lesser level of supervision because the parent voluntarily placed their child. A minimum level of staffing needs to be established in order to protect the health and safety of program participants. The programs must increase the minimum staffing requirements if necessary, based on acuity.

The department has considered all the comments regarding the staffing requirements and has amended the rule to allow awake night staffing ratio of 1 staff to 16 program participants provided that programs have at least one awake night staff in each building housing participants.

COMMENT #53: A commenter believes the proposed night time staffing ratio of at least 12 to 1 is an unreasonable ratio particularly over a range of program types and sizes. If the department believes parents should not be able to choose a program without awake staff, then the commenter proposes a night time staffing ratio of 16 to 1. The current proposed rule would increase annual costs of nearly \$200,000 as it would increase current night time staffing by 3 staff. The commenter states at their

level of care almost all students are sleeping at night unlike psychiatric hospitals. The cost of going from 0 night staff to 3 or 4 awake staff in smaller programs would be unnecessary and cost prohibitive, causing several programs to close. This obviously would cause a negative impact and is to be considered and avoided according to Montana Code (2-4-111, MCA).

RESPONSE #53: See Response #52. The department disagrees that programs requiring 3-4 awake night staff under the proposed rules would be considered a small program. Programs requiring this level of awake night staff have 36 to 48 program participants.

COMMENT #54: Adoption of this rule would be a departure from the program's successful treatment process and will be disruptive to our ongoing efforts. As our program is not a hospital or a setting accepting clients with high acuity, we believe that the presence of additional staff monitoring will imply to our students that we view them as presenting with higher levels of risk and that they are unable to self-regulate which we believe will compromise treatment. Additionally, it implies that our clients will always need high levels of supervision, even when they approach graduation, have participated in numerous off campus visits with their families, and have shown leadership for other students. Additional costs of hiring an awake staff team will prevent some needy families from accessing our program and others of similar nature. Our safety record and availability of staff present demonstrate that our supervision has been effective over the years. The commenter recognizes some awake staff can be reassuring to some clients who may have difficulties with sleep or anxiety and that the proposed changes have some merit to provide another level of support if organized in a way that reflects the type of students the programs accepts. The commenter proposes a ratio of 1 awake staff per 16 participants.

RESPONSE #54: See Response #52.

COMMENT #55: A commenter believes every parent should have the ability to choose the level of night staffing they feel appropriate for their child. The program's census is usually 6-10 students and the need for an awake overnight staff member is not only unnecessary but cost-prohibitive. The proposed rule would have a crucial and devastating impact on our very small business (2-4-111, MCA). The commenter requests the rule be revised to reflect students that do not require awake night staff. The proposed ratio may also impact programs that have an increased census and may also impact them in a financially detrimental way.

RESPONSE #55: See Response #52.

COMMENT #56: Several comments were received regarding the proposed day time staffing requirement. While a one-to-eight ratio may be appropriate for a particular program with students presenting certain problems, it may not be for others. Programs are unclear on who could be considered a "direct care staff." Commenters question if it includes teachers, administrators, and/or therapists when

they are all on campus. One commenter stated that if the rule counts only house moms, it would be overkill.

RESPONSE #56: The department has based the minimum day time staffing requirements based on the lowest level of care and acuity needs of participants based in these programs. See Response #53.

Adolescents struggling with emotional needs require a high level of supervision and anything less than a 1 to 8 ratio would not meet the health and safety needs of the participants. Teachers, administrators, or therapists that are providing direct care to the program participants may be counted in the staffing ratio. However, administrators, teachers, and therapists not directly providing care, even while on campus, may not be considered in the staffing ratio.

COMMENT #57: Several comments were received concerning programs being required to have nursing staff.

RESPONSE #57: The proposed new rule does not require all programs to have nursing staff. Nursing staff are only required for programs that describe that nursing care is provided in the program's description.

COMMENT # 58: Based off experience, one commenter is concerned programs do not have enough staff to provide appropriate recreational activities outdoors.

RESPONSE #58: The department has set minimum staffing requirements to ensure that programs have enough staff to supervise necessary activities for program participants including outdoor activities.

COMMENT #59: A commenter believes proposed staffing ratios would be devastating for facilities, creating significant obstacles for many programs in rural Montana to provide services.

RESPONSE #59: It is the responsibility of the program to ensure the availability of appropriate staff to meet the needs of the program participants. The location of the program and difficulty hiring staff in certain locations cannot override the program participants' need for safety and supervision.

COMMENT #60: Most troubling to one commenter is the program's fraudulent use of the term "counselor" and the staff at these facilities holding themselves out as professional counselors when they have no education or license.

RESPONSE #60: See Response #13.

NEW RULE XXX

COMMENT #61: The program supports this rule and recommends including a requirement for training on professional boundaries.

RESPONSE #61: The department appreciates the comment and agrees that training on professional boundaries would benefit program staff. However, the training currently proposed is the minimum programs must provide. The department does not feel it is prudent to add additional training requirements.

COMMENT #62: A commenter states, in their experience, staff in residential programs are under trained and unqualified to treat children.

RESPONSE #62: The department acknowledges this comment and expects the new rules regarding training requirements will increase the knowledge base and qualification of staff members providing services to program participants.

NEW RULE XXXII

COMMENT #63: One commenter suggested parents signing an over the counter medication permission form leads to staff administering medications such as Benadryl at their discretion and not on an "as needed" basis. The commenter expressed concerns about medications being used on a daily basis for the convenience of staff.

RESPONSE #63: Suggestions by the commenter are currently addressed in the proposed rules.

NEW RULE XXXVII

COMMENT #64: Several commenters request this rule be modified to allow for limitation (including denial) only with parental agreement. There are instances that due to student's behavioral choices (defiance, refusal, oppositionality, non-compliance, etc.) visits or communication may "reward" inappropriate behavior. Allowances for this must be present in the rule to best support the emotional needs of immature clients.

RESPONSE #64: The department has amended the communication policy to require programs to provide contact with parents/legal guardian one time per week, excluding therapeutic contact (family therapy). The behavioral modification program may not deny this contact for any reason including the program participants' behavior. The goal of any out-of-home placement is to reunify the family. Programs will hamper their progress with this goal if restricting contact with parents is too extreme.

COMMENT #65: A commenter had great concerns regarding a current program's lack of communication with parents/legal guardians and their children. A commenter states she has spoken to her child twice in almost 3 months. It does not make sense from a therapeutic standpoint that a sixteen-year-old child have such limited contact with their family.

RESPONSE #65: The department agrees and has made rule text changes to require weekly contact with parents/legal guardians regardless of the program participants' behavior.

NEW RULE XL

COMMENT #66: A commenter supports this rule and asks if the current practice of conducting "routine for cause" searches that occur at admission, after off-campus family visits, etc. can continue under proposed rules with written approval from parents.

RESPONSE #66: Searches as described may continue under proposed rule; however, they must be documented and parents/legal guardians must be notified according to rule.

COMMENT #67: Are prescreening urine tests following a home visit allowed if we have written approval from parents?

RESPONSE #67: Urinalysis testing is allowed with parental consent. Documentation requirements must be followed.

COMMENT #68: This section should allow for parents to give their permission for periodic and routine searches to maintain the health and well-being of all students. Procedures need to be in place and transparent to parents and the department to ensure the living environments are free from dangerous items that are discoverable through such searches.

RESPONSE #68: Periodic and routine searches are allowed with parental consent to maintain the health and well-being of all students and the program has reasonable cause documented for the search.

COMMENT #69: In this population adolescents are sent to us for reasons such as self-harm, stealing, and lying. Searches do happen very often for the safety of the students and staff. A program recommends that the rule state that the organization must have a written policy for searches and is signed by parents and program participants so that all parties are in agreement and understanding that this can happen often but only when necessary for safety.

RESPONSE #69: See Response #68.

COMMENT #70: A commenter recommends the rule should be amended to allow parents to give explicit permission for periodic routine searches of correspondence, computers, and possessions in order to maintain a safe and healthy environment. These types of searches are important so that the community can be protected from contraband and the creation of an underground culture that is dangerous for fellow students. A search policy should be transparent and agreed upon by parents.

RESPONSE #70: See Response #68.

COMMENT #71: The rule regarding breathalyzer testing should be eliminated as well as urinalysis, and should be, available to programs when authorized by parents as in (8)(c).

RESPONSE #71: The department disagrees with this comment. Urinalysis and breathalyzer testing is available at the request of a parent/legal guardian.

NEW RULE XLI

COMMENT #72: One commenter is concerned about damaging the therapeutic relationship with program participants if they are required to contact law enforcement when a small amount of cannabis is turned in or found on a program participant. The commenter requests a requirement allow disposal of contraband or turn into policy without identifying the program participant. The commenter states what if it is brought back from a home visit in a state where it is legal.

RESPONSE #72: The rule text has been changed to allow programs to determine in policy when it is appropriate to contact law enforcement.

COMMENT #73: A few comments were received regarding prohibiting firearms on program property. Program participants have in the past been allowed to hunt or engage in 4-H activities that use firearms. Programs have staff/owners living on the property that have and use firearms. The rule should allow programs to maintain firearms on property within program policies and procedures.

RESPONSE #73: The rule text has been revised to allow firearms on property and used by program participants with one on one supervision.

NEW RULE XLVI

COMMENT #74: A commenter would like a grace period for obtaining a Montana driver's license if they have a valid driver's license from another state and all other requirements are met.

RESPONSE #74: The rule text has been changed to require a valid driver's license. This will allow staff that have a valid out-of-state driver's license to transport program participants.

NEW RULE L

COMMENT #75: A commenter recommends requiring a staff to have a Wilderness First Responder Certificate or a Wilderness EMT certification on all expeditions.

RESPONSE #75: The proposed rule requires that each expedition has a field director. The field director must have a current wilderness first responder certification.

NEW RULE LII

COMMENT #76: A commenter states the population of students may not require "awake" overnight staff on outdoor adventures or excursions.

RESPONSE #76: The commenter is responding to staffing requirements for residential outdoor programs. Expedition staffing requirements are located in another rule and do not require awake night staff. Rule text for residential outdoor night staffing has been changed to reflect concerns regarding overnight staff for all private programs with the exception of expeditions.

NEW RULE LIII

COMMENT #77: A commenter does not feel it is necessary for the field director to be required to go on every group expedition, as the only additional competency-based training requirement of the field director is that he or she must have a wilderness first responder certificate. The commenter feels an adequate staff to program participant on a program expedition is one program staff to six program participants.

RESPONSE #77: The department disagrees with the commenter as the field director is responsible for the quality of the field activities, coordinating field operations, and supervising direct care staff among other duties. The field director must have additional educational and/or experience that is not required of direct care staff. The proposed staffing requirements are necessary to ensure the safety and well-being of program participants. Due to the inherent risk factors of expeditions, a higher level of supervision is required.

NEW RULE LV

COMMENT #78: A commenter states there are many other technologies that are more convenient, financially less money, and actually work better than satellite phones. Satellite phones have a habit of not being able to send calls out of certain areas or dropping calls. Global position satellite (GPS) style transmitters that relay messages and coordinates are much more capable.

RESPONSE #78: The proposed rule allows for a GPS system to be used.

COMMENT #79: A commenter believes it is unnecessary to require the field office to be staffed during a group expedition. A satellite phone can call any location and the items mentioned in rule can be accessed electronically.

RESPONSE #79: The proposed rule does not require 24-hour staff to continually monitor communications at the field office. The rule also requires staff to be available by satellite phone within 15 minutes of the field office.

NEW RULE LVI

COMMENT #80: A commenter believes the daily contact logs seem unnecessary and as a director would prefer staff spending their time seeing to students' needs and spending less time filling out daily logs for general statements.

RESPONSE #80: Documentation is necessary to ensure program staff are assessing the area on a daily basis to ensure the health and safety of the program participants. Staffing levels must be sufficient in order for staff to supervise program participants and tend to necessary daily program requirements during an expedition.

NEW RULE LVII

COMMENT #81: Due to satellite phones not being reliable, it might be better if the "verbal" portion of the communication was taken out and just left as communication.

RESPONSE #81: If verbal communication is not possible, programs have the ability to use GPS systems until verbal communication is established. Programs must document the attempt to verbally communicate with the field office.

NEW RULE LX

COMMENT #82: Many parents, staff, and programs may not want their students wearing sunscreen or insect repellent due to cancer causing agents.

RESPONSE #82: Sunscreen and insect repellent are necessary to protect the program participants while outdoor on expedition. Staff may choose to use them or not.

COMMENT #83: Insurance reimbursement eligibility is a key decision criterion for families placing a child. Montana has historically not been treated with the equivalent reimbursement value by insurance carriers as states like Idaho, Utah, and Arizona. DPHHS needs to adopt a similar name for these programs, such as residential treatment centers.

RESPONSE #83: DPHHS is unable to change the name of these programs as the terminality is set in Senate Bill 267.

COMMENT #84: Maintaining the name Alternative Adolescent Program would place programs licensed by the State of Montana at an unnecessary competitive disadvantage while the administrative rules are equal to "residential treatment center" in Idaho, Utah, and Arizona.

RESPONSE #84: See Response #83. Programs may choose to be licensed under Title 50 chapter 5, MCA as a Residential Treatment Facility.

COMMENT #85: Commenters requested time frames and expectation for facilities to become compliant with these rules.

RESPONSE #85: Administrative rules become effective upon adoption. Programs are required to begin implementing rules at this time. The department will provide a six-month time period for programs to submit updated policy and procedures required per new rules. The department will be available to assist programs during this transition.

COMMENT #86: A commenter does not believe these rules apply to their program and they should be excluded from the proposed rules and an alternative placement should be considered for oversight on licensure.

RESPONSE #86: The State of Montana has two licensing options for programs serving youth. Private Alternative Adolescent Residential or Outdoor Program licensure under these proposed rules or youth care facility licensure is available for programs providing substitute care pursuant to Title 52, chapter 2, part 6, MCA. Licensure authority for programs and facilities is determined by the Montana Legislature. The department does not have the authority to develop an alternative license category for programs that believe they should be excluded from these rules.

5. The department intends these rules to be effective upon publication.

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

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

Certified to the Secretary of State October 29, 2019.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.8.107 and 37.8.116)
pertaining to vital records)

TO: All Concerned Persons

1. On September 20, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-896 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1607 of the 2019 Montana Administrative Register, Issue Number 18.

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

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

COMMENT #1: A commenter asked if the proposed amendment to ARM 37.8.107 permits a coroner, deputy coroner, or medical examiner to amend a vital record without a court order.

RESPONSE #1: The proposed amendment to ARM 37.8.107 allows a coroner, deputy coroner, or medical examiner to seek amendment of a cause of death certification without obtaining a court order if the cause of death is not disputed.

4. These rule amendments are effective January 1, 2020.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State October 29, 2019.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION,
Rule I, amendment of ARM	)	AMENDMENT, AND REPEAL
42.13.111, 42.13.201, 42.13.401,)	
42.13.806, 42.13.1002, 42.13.1003,)	
and repeal of ARM 42.12.317 and)	
42.13.404 pertaining to implementing)	
legislative changes to table wine,)	
hard cider, and sacramental wine tax)	
reporting requirements and)	
microdistillery production changes;)	
and updating labeling and packaging)	
requirements)	

TO: All Concerned Persons

1. On September 6, 2019, the Department of Revenue published MAR Notice No. 42-1002 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1497 of the 2019 Montana Administrative Register, Issue Number 17.

2. The department has adopted New Rule I (42.13.406), amended ARM 42.13.111, 42.13.201, 42.13.401, 42.13.806, 42.13.1002, 42.13.1003, and repealed ARM 42.12.317 and 42.13.404 as proposed.

3. No comments or testimony were received.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State October 29, 2019.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.21.165 pertaining to)
livestock reporting per capita fee)
payment and refund process)

TO: All Concerned Persons

1. On September 20, 2019, the Department of Revenue published MAR Notice No. 42-1004 pertaining to the proposed amendment of the above-stated rule at page 1619 of the 2019 Montana Administrative Register, Issue Number 18.
2. The department has amended ARM 42.21.165 as proposed.
3. No comments or testimony were received.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State October 29, 2019.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 1.2.419 pertaining to the)
scheduled dates for the 2020)
Montana Administrative Register)

TO: All Concerned Persons

1. On September 20, 2019, the Secretary of State published MAR Notice No. 44-2-237 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1626 of the 2019 Montana Administrative Register, Issue Number 18.
2. The Secretary of State has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ COREY STAPLETON
Corey Stapleton
Secretary of State

Dated this 29th day of October, 2019.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known
Subject

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

Statute

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

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2019. This table includes notices in which those rules adopted during the period May 10, 2019, through October 18, 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 June 30, 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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