

# MONTANA ADMINISTRATIVE REGISTER

2019 ISSUE NO. 24  
DECEMBER 27, 2019  
PAGES 2274-2415



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 24

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.43.1302, 2.43.2110,	)	AMENDMENT AND REPEAL
2.43.2114, 2.43.2120, 2.43.2309,	)	
2.43.2315, 2.43.2610, 2.43.2902,	)	NO PUBLIC HEARING
2.43.3008, 2.43.4020, and 2.43.4620,	)	CONTEMPLATED
all pertaining to the operation of the	)	
retirement systems and plans	)	
administered by the Montana Public	)	
Employees' Retirement Board and	)	
repeal of ARM 2.43.3601 pertaining	)	
to allocation of additional employer	)	
contributions on behalf of Montana	)	
university system employees in the	)	
optional retirement program	)	

TO: All Concerned Persons

1. On February 28, 2020, the Public Employees' Retirement Board proposes to amend and repeal the above-stated rules.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Public Employee Retirement Administration no later than 5:00 p.m. on January 17, 2020, to advise us of the nature of the accommodation that you need. Please contact Kris Vlastic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail [kvlastic@mt.gov](mailto:kvlastic@mt.gov).

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

2.43.1302 DEFINITIONS Undefined terms used in this chapter are consistent with statutory meanings. Defined terms will be applied to the statutes unless a contrary meaning clearly appears. For the purposes of this chapter, the following definitions apply:

(1) through (9) remain the same.

(10) "Filed" or "filed with the board" generally means the electronic delivery or mailing of a form or payment in a properly addressed stamped envelope ~~which is properly addressed to MPERA or the board.~~

(a) ~~The~~ If the form or payment is mailed, the postmark date will be used to determine the date on which filing occurs.

(b) remains the same.



(c) If the form is ~~faxed or e-mailed~~ electronically delivered to MPERA, it is considered filed on the day it is received in the MPERA office, ~~provided a hard copy is received in the MPERA office within five working days of the filing date, because an original signature is required.~~

(11) through (24) remain the same.

(25) "Signature" includes an electronic signature as defined in 30-18-102, MCA.

(25) through (27) remain the same but are renumbered (26) through (28).

AUTH: 19-2-403, MCA

IMP: 19-2-403, MCA

REASON: The current language of (10) only addresses the delivery of forms sent via traditional mail. The board desires to update language under (10) to account for forms delivered electronically and also desires to repeal the current language of (10) which states, "which is properly addressed to MPERA or the board" as it creates confusion with the proposed new language of "electronically delivered" which would appear as an optional precedent filing instruction.

The current language of (10)(a) is ambiguous to the delivery method used for form submittal but speaks to "postmark date" which is specific to traditional mail. The board desires to clarify that this portion of the rule only applies to traditional mail service.

The current language of (10)(c) speaks to forms delivered only via fax or email. The board desires to amend this rule to allow for additional mediums of electronic delivery if the board deems them appropriate. Presently, when a form is delivered electronically, the current language requires a hard copy of the form be sent to MPERA via traditional mail within five working days due to an "original signature" requirement for forms. The board desires to include "electronic signature" as an officially accepted form of signature as permitted pursuant to 30-18-102, MCA. Upon the formal adoption and acceptance of "electronic signatures" by the board, the "five working day" delivery requirement for signed paper forms would become unnecessarily burdensome.

The current language of (25) is proposed by the board to include electronic signatures as officially recognized and defined pursuant to 30-18-102, MCA.

2.43.2110 CALCULATION OF HIGHEST AVERAGE COMPENSATION OR FINAL AVERAGE COMPENSATION WITH LUMP SUM PAYMENTS (1) For applicable systems, ~~Lump-sum lump-sum~~ payments made upon termination of employment for paid leave, including banked holiday time, vacation, personal, sick, or compensatory leave ~~must~~ may be included in the calculation of a member's highest average compensation (HAC) ~~or final average compensation~~ by replacing lower consecutive compensation months with the same number of higher consecutive compensation months.

(2) The number of replacement months and the amount of compensation included in the replacement months is determined by either:

(a) and (b) remain the same.

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

AUTH: 19-2-403, MCA

IMP: 19-2-303, 19-2-506, 19-2-1005, 19-3-108, 19-6-101, 19-7-101, 19-8-101, ~~19-9-104~~, 19-13-104, MCA

REASON: Sections 19-3-108, 19-6-101, 19-7-101, 19-8-101, and 19-13-104, MCA, define highest average compensation (HAC) as a specific period of compensation received by the member during "consecutive months" of membership service.

These sections further permit lump sum payments paid to a member upon termination of employment to be used in the calculation of their HAC only to the extent that they are "used to replace, on a month-for-month basis," the regular or normal compensation "for a month or months included in the calculation" of the HAC. This proposed change is therefore consistent with statute, and (1) is rewritten to promote clarity and understanding with current statute. The addition of language stating "For applicable systems," in (1) as well as the repeal of reference to "final average compensation" (FAC) in the title of the rule as well as (1) and the repeal of 19-9-104, MCA as implementing statutory authority is necessary as lump sum payments upon termination of employment in the Montana Police Officers' Retirement System (MPORS) are not permitted to be included in a MPORS member's FAC by statute.

2.43.2114 REQUIRED EMPLOYER REPORTS (1) All reporting agencies shall file the following employer reports, for member and nonmember employees no later than five working days after each regularly occurring payday:

(a) and (b) remain the same.

(c) a working retiree report, ~~which includes:~~

~~(i) a PERS retiree performing work in a PERS covered position as an employee, an independent contractor, or through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor. A working retiree returning to a PERS covered position in other than employee status is defined as a "worker" for purposes of this rule;~~

~~(ii) a SRS retiree performing work in a SRS covered position as an employee;~~

~~(iii) a FURS retiree performing work in a FURS covered position as an employee.~~

(2) through (10) remain the same.

AUTH: 19-2-403, MCA

IMP: 19-2-506, 19-3-315, 19-3-316, 19-3-412, 19-3-1106, 19-3-1113, 19-3-2117, 19-7-1101, MCA

REASON: Pursuant to Sections 19, 26, and 32, Chapter 195, Laws of 2017, all systems now have working retiree provisions. As such, it is no longer necessary to

list each system under (1)(c)(i), (c)(ii), and (c)(iii) that (c), "a working retiree report," was previously applicable to. In addition, the PERS portion of the rule under (1)(c)(i) is already covered in statute at 19-3-1106, MCA, and should not be duplicated in rule.

2.43.2120 REINSTATEMENT -- CREDIT FOR LOST TIME (1) remains the same.

(2) An involuntarily terminated member who refunds or retires prior to being returned to employment as the result of a suit, court order, arbitration, or out-of-court settlement and who is awarded retroactive compensation ~~as a result~~ because of the claim may petition the board for membership service and service credit to be granted for the ~~period of~~ time lost, ~~provided the~~.

(a) The retired member repays must repay all retirement benefits, plus the actuarially assumed rate of interest on the benefits.

(b) The member who refunded must repay all accumulated contributions, plus the actuarially assumed rate of interest on the accumulated contributions.

(3) and (4) remain the same.

AUTH: 19-2-403, MCA

IMP: 19-2-303, MCA

REASON: Current language addresses inactive and retired members who are reinstated to covered-employment. The rule is silent with respect to members who refunded their accumulated contributions prior to being reinstated. The issue was brought to the board by a reinstated employee who had refunded his account. The board determined to treat the refunded member similarly to a retired member and directed that this rule be amended accordingly.

2.43.2309 SERVICE PURCHASES BY INACTIVE VESTED MEMBERS

(1) remains the same.

(2) The inactive vested member's most recent termination date will be considered the purchase request date for all service purchases other than refunded service, which is addressed in 19-2-603, MCA and PERS retroactive service, which is addressed in 19-3-505, MCA.

(a) remains the same.

(b) Interest, equaling the actuarially assumed rate of return for the trust fund in effect on the member's most recent termination date, will be charged and compounded ~~monthly~~ annually until the member completes payment for the cost of the purchase.

(3) remains the same.

AUTH: 19-2-403, MCA

IMP: 19-2-603, ~~19-2-715~~, 19-2-908, 19-3-401, 19-5-301, 19-6-301, 19-7-301, 19-8-301, 19-9-301, 19-13-301, MCA

REASON: The purchase of refunded service and the purchase of retroactive service are specifically addressed in statute. The cost of either service is not determined

based on an inactive member's most recent termination date. Therefore, both service purchase types should be excluded from this rule, not just refunded service.

Additionally, MPERA compounds interest on service purchases on an annual basis and applies the interest monthly. This process resulted in an inadvertent reference in rule to compounding monthly rather than annually as determined by the board.

The repeal of 19-2-715, MCA as implementing statutory authority is necessary as it is for the purchase of public service by an active member and this rule is for service purchase by inactive members.

2.43.2315 CREDIT FOR SERVICE IN THE UNIFORMED SERVICES (1) If an actively employed member of PERS, JRS, HPORS, SRS, GWPORS, MPORS, or FURS is called to duty for a period or periods of service in the uniformed services, the member receives membership service for that time and may receive service credit ~~and membership service~~ within the member's retirement system ~~for that time~~, provided the member:

(a) through (10) remain the same.

AUTH: 19-2-403, MCA

IMP: 19-2-704, 19-2-707, MCA

REASON: USERRA mandates that USERRA time counts toward vesting for retirement system members who return to covered employment following USERRA regardless of whether the USERRA time is purchased by the retirement system member. If the USERRA time is purchased by the retirement system member, the time counts toward vesting and for benefit calculation purposes.

2.43.2610 DESIGNATION OF BENEFICIARY BY RETIREES, ALTERNATE PAYEES, AND CONTINGENT ANNUITANTS (1) remains the same.

(2) The Except as provided in (3), the designation of beneficiary shall be effective immediately upon filing with MPERA.

(3) If a retirement system member who has applied for retirement dies prior to receipt of their initial retirement benefit, the member's beneficiary must revert to the beneficiary or beneficiaries designated on their retirement system membership card.

AUTH: 19-2-403, MCA

IMP: 19-2-801, 19-2-907, 19-3-1501, 19-5-701, 19-7-1001, 19-8-1105, MCA

REASON: Section 19-2-801(4)(c), MCA provides that the beneficiary or beneficiaries named on the member's retirement application become effective when the member retires. A member who dies prior to receipt of their initial retirement benefit is not a retired member. Therefore, the beneficiary designation on the retirement application is not yet effective and the beneficiary designation on the membership form controls.

2.43.2902 DEATH PAYMENTS, SURVIVOR BENEFITS, AND OPTIONAL RETIREMENT BENEFITS (1) Upon the death of an active or inactive member, the member's designated beneficiary or statutory beneficiary must submit a certified copy of the member's death certificate and a completed death claim form to MPERA. A statutory beneficiary must also submit adequate documentation confirming their status as a surviving spouse or dependent child. Documentation can include, but it is not limited to, birth and marriage certificates.

(2) through (7) remain the same.

AUTH: 19-2-403, MCA

IMP: 19-2-801, 19-3-1201, 19-5-801, 19-5-802, 19-6-901, 19-6-902, 19-6-903, 19-7-901, 19-8-1001, 19-8-1002, 19-8-1003, 19-9-1101, 19-9-1102, 19-13-902, 19-13-903, MCA

REASON: Current language of the rule is silent with respect to the documentation required of statutory beneficiaries of deceased members needing to be furnished to establish legal proof of relation to the decedent in order to receive a benefit. This proposed amendment provides the board's staff with authority to request and receive additional documentation to establish a statutory beneficiary's legal proof of relation to the decedent.

2.43.3008 FAMILY LAW ORDERS – CONTENTS AND DURATION FOR DEFINED BENEFIT PLANS (1) and (2) remain the same.

(3) FLOs for participants who are in more than one retirement system, choose to be in a DROP, or are eligible for multiple monthly benefit payments from the same retirement system must specify the benefit or benefits to which the FLO applies. If a benefit is not included in a FLO, it is not subject to distribution pursuant to the FLO.

(3) through (5) remain the same but will be renumbered (4) through (6).

AUTH: 19-2-403, 19-2-907, MCA

IMP: 19-2-907, MCA

REASON: The current rule does not specifically address participants subject to Family Law Orders (FLOs) who are members of multiple retirement systems, eligible for multiple benefits from the same retirement system, or in a Deferred Retirement Option Plan (DROP). This proposed amendment clarifies that FLOs for participants who receive multiple benefit payments must specifically include each benefit payment in the FLO for it to be subject to distribution under the FLO. The board desires this additional language to be included in order to increase administrative and judicial efficiency by minimizing the need of board staff for requests for clarification and amendment of FLOs filed with it covering participants who receive multiple benefit payments.

2.43.4020 EMPLOYMENT AFTER THE DROP PERIOD - PAYMENTS

(1) remains the same.

(2) The participant's monthly service retirement benefit payments for the pre-DROP and the post-DROP period will begin the month following the month in which the participant terminates post-DROP HPORS-covered employment.

(3) remains the same.

(4) The surviving spouse or dependent child(ren) in existence at the time of the participant's death will receive both continuing monthly service retirement benefit payments. If there is no surviving spouse or dependent child(ren) at the time of the participant's death:

(a) any remaining accumulated contributions attributable to the pre-DROP period will be paid to the designated beneficiary for that benefit payment; and

(b) any remaining accumulated contribution attributable to the post-DROP period will be paid to the designated beneficiary for that benefit payment.

AUTH: 19-2-403, 19-6-1003, MCA

IMP: 19-6-1003, 19-6-1007, MCA

REASON: The board has noted that it is not unusual for Deferred Retirement Option Plan (DROP) participants to continue working post-DROP. Statute mandates that the post-DROP retirement benefit be calculated separately from the pre-DROP retirement benefit. This separate benefit structure requires that each of the distinct retirement benefits be deducted from the accumulated contributions attributable to the period during which the benefit was earned. This proposed amendment supports the board's decision and provides the board's staff with authority for the payment of any outstanding accumulated contributions in the event of the member's death.

#### 2.43.4620 EMPLOYMENT AFTER THE DROP PERIOD - PAYMENTS

(1) remains the same.

(2) The participant's monthly service retirement benefit payments for the pre-DROP period and the post-DROP period will begin the month following the month in which the participant terminates post-DROP employment.

(3) remains the same.

(4) The surviving spouse or dependent child(ren) in existence at the time of the participant's death will receive both continuing monthly service retirement benefit payments. If there is no surviving spouse or dependent child(ren) at the time of the participant's death:

(a) any remaining accumulated contributions attributable to the pre-DROP period will be paid to the designated beneficiary for that benefit payment; and

(b) any remaining accumulated contribution attributable to the post-DROP period will be paid to the designated beneficiary for that benefit payment.

AUTH: 19-2-403, 19-9-1203, MCA

IMP: 19-9-1207, MCA

REASON: The board has noted that it is not unusual for Deferred Retirement Option (DROP) participants to continue working post-DROP. Statute mandates that the post-DROP retirement benefit be calculated separately from the pre-DROP

retirement benefit. This separate benefit structure requires that each of the distinct retirement benefits be deducted from the accumulated contributions attributable to the period during which the benefit was earned. This proposed amendment supports the board's decision and provides the board's staff with authority for the payment of any outstanding accumulated contributions in the event of the member's death.

4. The Public Employees' Retirement Board proposes to repeal the following rule:

2.43.3601 ALLOCATION OF ADDITIONAL EMPLOYER CONTRIBUTIONS  
ON BEHALF OF MONTANA UNIVERSITY SYSTEM EMPLOYEES IN THE  
OPTIONAL RETIREMENT PROGRAM

AUTH: 19-2-403, 19-3-2104, MCA

IMP: 19-3-2104, MCA

REASON: Sections (1)(a), (1)(b), and (1)(c) constituting the entirety of this rule are proposed to be repealed due to the Public Employees' Retirement System's Defined Benefit Plan's (PERS DB) unfunded actuarial liability created by PERS members electing to participate in the DCRP or the Montana University System Retirement Program (MUS-RP), otherwise known as the plan choice rate unfunded actuarial liability (PCR UAL), being fully paid off in the first quarter of 2016. Therefore, pursuant to 19-21-214(4), MCA, the percentage of compensation in (1)(a) of the rule of 1.00%, (1)(b) of the rule of 0.27%, and (1)(c) of the rule of the 0.1% additional employer contribution that commenced on July 1, 2014 must be allocated to the member's retirement account and is no longer used to pay down the PCR UAL.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail [mpera@mt.gov](mailto:mpera@mt.gov), and must be received no later than 5:00 p.m., January 24, 2020.

6. If persons who are directly affected by the proposed amendments wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Kris Vladic at the above address no later than 5:00 p.m., January 24, 2020.

7. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent

of those directly affected has been determined to be 8,159 based on approximately 81,590 participants in the Defined Benefit Retirement Plans.

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

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

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

/s/ William Holahan  
William Holahan  
Chief Legal Counsel  
and Rule Reviewer

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

Certified to the Secretary of State December 17, 2019.



BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
8.94.3802, 8.94.3804, 8.94.3805,	)	
8.94.3807, 8.94.3809, and 8.94.3812	)	
pertaining to the Treasure State	)	NO PUBLIC HEARING
Endowment Program (TSEP)	)	CONTEMPLATED

TO: All Concerned Persons

1. On February 4, 2020, the Department of Commerce proposes to repeal the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., January 29, 2020, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; TDD (406) 841-2731; facsimile (406) 841-2771; or e-mail to docadministrativerules@mt.gov.

3. The department proposes to repeal the following rules:

8.94.3802 INCORPORATION BY REFERENCE OF RULES FOR  
ADMINISTERING THE TREASURE STATE ENDOWMENT PROGRAM

AUTH: 90-6-710, MCA

IMP: 90-6-710, MCA

9.94.3804 INCORPORATION BY REFERENCE OF RULES FOR  
ADMINISTERING THE 1998 TREASURE STATE ENDOWMENT PROGRAM

AUTH: 90-6-710, MCA

IMP: 90-6-710, MCA

8.94.3805 INCORPORATION BY REFERENCE OF RULES FOR  
ADMINISTERING THE 1999 TREASURE STATE ENDOWMENT PROGRAM  
PROJECTS

AUTH: 90-6-710, MCA

IMP: 90-6-710, MCA

8.94.3807 INCORPORATION BY REFERENCE OF RULES FOR  
ADMINISTERING THE 2001 TREASURE STATE ENDOWMENT PROGRAM

AUTH: 90-6-710, MCA  
IMP: 90-6-710, MCA

8.94.3809 INCORPORATION BY REFERENCE OF RULES FOR THE  
ADMINISTRATION OF TREASURE STATE ENDOWMENT GRANTS AWARDED  
BY THE 2003 LEGISLATURE

AUTH: 90-6-710, MCA  
IMP: 90-6-710, MCA

8.94.3812 INCORPORATION BY REFERENCE OF RULES FOR THE  
ADMINISTRATION OF TREASURE STATE ENDOWMENT GRANTS AWARDED  
BY THE 2005 LEGISLATURE

AUTH: 90-6-710, MCA  
IMP: 90-6-710, MCA

REASON: The Department of Commerce has determined there is reasonable necessity to repeal ARM 8.94.3802, 8.94.3804, 8.94.3805, 8.94.3807, 8.94.3809, and 8.94.3812 because all projects initiated thereunder have been closed out. Therefore, these rules are no longer necessary and have no effect.

4. Concerned persons may submit their data, views, or arguments in written form or request an opportunity to submit data, views, or arguments in oral form to: Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; TDD (406) 841-2731; facsimile (406) 841-2771; or e-mail to [docadministrativerules@mt.gov](mailto:docadministrativerules@mt.gov), and must be received no later than 5:00 p.m., January 24, 2020.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Bonnie Martello at the above address no later than 5:00 p.m., January 24, 2020.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Ten percent of those directly affected has been determined to be 29, based on the 292 cities, counties, towns, tribes, and water-sewer districts that are eligible to apply for an TSEP grants. Notice of the hearing will be published in the Montana Administrative Register.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

their name added to the list may make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to docadministrativerules@mt.gov, or by completing a request form at any rules hearing held by the department.

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

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

/s/ Amy Barnes

Amy Barnes  
Rule Reviewer

/s/ Tara Rice

Tara Rice  
Director  
Department of Commerce

Certified to the Secretary of State December 17, 2019.

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

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 12.5.709 pertaining to the Pilot	)	AMENDMENT
Program for Aquatic Invasive Species	)	
in the Flathead Basin	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On February 4, 2020, the Department of Fish, Wildlife and Parks (department) proposes to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than January 10, 2020, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

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

12.5.709 PILOT PROGRAM FOR FLATHEAD BASIN (1) through (3) remain the same.

~~(4) This rule expires March 31, 2020.~~

AUTH: 80-7-1007, 80-7-1010, MCA

IMP: 80-7-1008, 80-7-1010, 80-7-1011, MCA

REASON: The current mandatory inspection before launch rule for the Flathead Basin is scheduled to expire March 31, 2020. The program has been very successful and is supported by CSKT and other local stakeholders. The department is proposing to remove the expiration date and continue the program indefinitely.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Tom Woolf, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail [Thomas.Woolf@mt.gov](mailto:Thomas.Woolf@mt.gov), and must be received no later than January 24, 2020.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Tom Woolf at the above address no later than 5:00 p.m., January 24, 2020.

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

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

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

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

/s/ Aimee Hawkaluk  
Aimee Hawkaluk  
Rule Reviewer

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

Certified to the Secretary of State December 17, 2019.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 12.5.707 pertaining to ) PROPOSED AMENDMENT  
Removing Canyon Ferry Reservoir )  
from the list of Identified Bodies of )  
Water Confirmed or Suspected for )  
Aquatic Invasive Mussels )

TO: All Concerned Persons

1. On January 22, 2020, at 6:00 p.m., the Department of Fish, Wildlife and Parks (department) will hold a public hearing at the Fish, Wildlife and Parks Headquarters Building, 1420 E. 6th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than January 10, 2020, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

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

12.5.707 IDENTIFIED BODIES OF WATER CONFIRMED OR SUSPECTED FOR AQUATIC INVASIVE MUSSELS (1) The department has identified the following bodies of water as invasive species management areas because they are infested with confirmed or suspected aquatic invasive mussels:

- ~~(a) Canyon Ferry Reservoir; and~~
- (b) remains the same but is renumbered (a).
- (2) through (5) remain the same.

AUTH: 80-7-1007, 80-7-1008, 80-7-1010, 87-1-201, MCA

IMP: 80-7-1008, 80-7-1010, 80-7-1011, MCA

REASON: In 2017, the detection of invasive mussel larvae resulted in quarantine requirements and the listing of "suspect" for invasive mussels for Canyon Ferry Reservoir. Following regional guidelines for invasive mussel detection, intensive early detection monitoring was conducted for three years. Following three years of no invasive mussel detection, regional guidelines allow for the delisting of a suspect waterbody and the removal of the mandatory exit inspection requirements.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Tom Woolf, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail Thomas.Woolf@mt.gov, and must be received no later than January 24, 2020.

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

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

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

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

/s/ Aimee Hawkaluk  
Aimee Hawkaluk  
Rule Reviewer

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

Certified to the Secretary of State December 17, 2019.

BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULE I pertaining to Rental Vouchers ) PROPOSED ADOPTION  
for Re-entering Offenders )

TO: All Concerned Persons

1. On January 16, 2020, at 11:00 a.m., the Department of Corrections will hold a public hearing in the 3rd Floor EOC Conference Room at the Montana Department of Corrections, 5 South Last Chance Gulch, Helena, MT 59620, to consider the proposed adoption of the above-stated rule.

2. The Department of Corrections 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 Corrections no later than 5:00 p.m. on January 14, 2020, to advise us of the nature of the accommodation that you need. Please contact Kurt Aughney, Department of Corrections, 5 South Last Chance Gulch, P.O. Box 201301, Helena, Montana, 59620; telephone (406) 444-0348; fax (406) 444-4920; TDD/Montana Relay Service (406) 444-4290; or e-mail KurtAughney2@mt.gov or relay@mt.gov.

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

NEW RULE I RENTAL VOUCHERS – OFFENDER ELIGIBILITY – RENTAL VOUCHER DISBURSEMENTS (1) Eligibility for rental voucher assistance to offenders re-entering the community on parole is based on the criteria in 46-23-1041, MCA, and this rule.

(2) The term "unable to secure" suitable living arrangements, as used in 46-23-1041, MCA means that at the time of applying/being referred for rental voucher assistance, the offender has insufficient personal funds in the inmate trust account system (53-1-107, MCA) to pay:

- (a) non-recurring re-entry expenses specified in (3); and
- (b) three months of recurring monthly living expenses specified in (4).
- (3) Non-recurring re-entry expenses are:
  - (a) street clothing;
  - (b) Montana driver license/ID fees;
  - (c) vehicle registration and insurance, if applicable, or cost of bicycle;
  - (d) a telephone; and
  - (e) a landlord-required cleaning/damage deposit, if applicable.
- (4) Recurring monthly living expenses are:
  - (a) food and housekeeping supplies;
  - (b) personal care;
  - (c) rent;
  - (d) telephone service;



- (e) vehicle fuel or city bus fare;
- (f) utilities (water, sewer, gas, and electric);
- (g) supervision fee; and
- (h) child support – actual court ordered or CSED ordered.

(5) For purposes of calculating offender financial eligibility for rental voucher assistance under (3) and (4), the department will use:

(a) current data pertaining to the cost for Montana driver licenses/IDs found at: <https://dojmt.gov/driving/driver-licensing/>;

(b) current data pertaining to average fair market rent (FMR) for a one-bedroom unit in the Montana county where the offender will reside as set out in the Housing and Urban Development (HUD) Fair Market Rent (FMR) Documentation System found at: <https://www.huduser.gov/portal/datasets/frm.html#YYYY>.

(Substitute current calendar year for YYYY); and

(c) current cost data from the U.S. Census Bureau's Consumer Price Indexes for all Urban Consumers (CPI-U) found at: <https://www.census.gov/library/publications/2011/compendia/statab/131ed/prices.html>.

(6) Subject to the requirements in (7), designated department staff shall refer all offenders reentering the community on parole to the department's programs and facilities bureau for a rental voucher eligibility determination using a form prescribed by the department. A determination of ineligibility based on the objective criteria set out in 46-23-1041, MCA and this rule, is not subject to the grievance procedure. The legislature intended that rental voucher assistance (SB 65 2017) not constitute a right or an entitlement program.

(7) Eligibility for rental voucher assistance requires that, subject to Board of Pardons and Parole approval of the offender's release plan, an offender be:

(a) sentenced to prison as defined in 53-30-101(3)(c), MCA, and reentering the community directly from prison; or

(b) a DOC commit incarcerated in a prison as defined in 53-30-101(3)(c), MCA, on a secure placement request and reentering the community directly from prison; or

(c) an offender reentering the community directly from a residential treatment program to which the offender was conditionally paroled from prison, i.e., paroled by the Board of Pardons and Parole on condition that the offender satisfactorily complete the residential treatment program.

(8) A referral for rental voucher assistance must be made before an offender specified in (7) is released from the prison facility on parole or on conditional parole. For inmates being released from the prison facility on conditional parole to a treatment facility for completion of the treatment program, the department may preliminarily determine rental voucher eligibility at the time the referral is received but defer making a final determination until the treatment program is satisfactorily completed and the department receives data/information pertaining to the offender's treatment completion and/or release plan that was unavailable for inclusion in the referral when made.

(9) An offender paroled from prison on condition of satisfactory completion of a pre-release program is not eligible for rental voucher assistance because pre-release is a residential program and participants are required to be gainfully

employed and to save money for re-entry during their pre-release program participation.

(10) For purposes of this rule, "suitable housing" or "suitable living arrangements" means sanitary and habitable housing appropriate for long-term or permanent occupancy by a lessee having an arm's length relationship with a lessor. A sober living home may constitute "suitable housing" for a reentering offender diagnosed with a substance use disorder notwithstanding that the sober living home is operated as a membership organization and payment due from residents is termed a membership fee rather than rent. The terms "suitable housing" or "suitable living arrangements" do not include temporary respite housing such as homeless shelters, hotels, motels, or the home of a reentering offender's family member if the family member does not regularly rent the subject premises to non-relatives in arm's length transactions. An offender who is ineligible for rental voucher assistance due to the temporary nature of housing as described herein may qualify for transitional assistance. Transitional assistance differs from rental voucher assistance and is outside the scope of this rule.

(11) Rental vouchers shall be issued by the department directly to an eligible reentering offender's landlord on behalf of the offender. Rental vouchers may not be issued in advance, i.e., no more than one rental voucher for one month's rent may be issued and outstanding at any given time. The three-month maximum rental voucher benefit under 46-23-1041, MCA, is not a guarantee of three months' rent to the offender or to the landlord. An offender may become ineligible during the three-month period following re-entry by reason of revocation of the offender's community supervision or other circumstances. No landlord-tenant relationship or any other contractual relationship exists between the department and the landlord arising from issuance of rental vouchers on behalf of eligible offenders reentering the community. No agency relationship exists between the department and an eligible offender on whose behalf the department issues rental vouchers to landlords. The department is not liable for any delinquent rent, property damage, condition or cleanliness of the unit upon being vacated by an offender, theft of property, or other claims or demands of the landlord against the offender tenant. The department shall provide a written notice to prospective landlords on a form prescribed by the department containing information about the rental voucher program including the relevant parameters stated herein.

(12) Rental voucher payments made by the department on behalf of an eligible offender shall only be made upon the department's receipt of an invoice or statement clearly identifying the offender, the address of the offender's rental unit, and the landlord-lessor's mailing address to which rental vouchers shall be mailed.

(13) The rental voucher program applies only to the initial housing secured by an offender upon reentry to the community from prison or from a treatment program as provided in this rule, unless:

(a) the offender moves to a second housing unit before the three-month maximum voucher benefit period has been exhausted;

(b) there has been no gap between vacating the first housing unit and taking possession of the second; and

(c) the offender remains otherwise eligible for the rental voucher program.

AUTH: 46-23-1002, MCA  
IMP: 46-23-1002, 46-23-1041, MCA

REASON: The 2017 Montana Legislature adopted SB 65 authorizing the department to provide rental vouchers to parolees re-entering the community in statutorily specified circumstances for a limited time period. The authorization was codified as 46-23-1041, MCA. SB 65 also amended 46-23-1002, MCA, to give the department authority to adopt rules for administering the rental voucher program. During the 2019 legislative session, funding was appropriated to the department in HB 2 for the rental voucher program.

NEW RULE I is reasonable and necessary to establish: a) offender eligibility criteria within the parameters set by the legislature; b) a means of implementing the rental voucher program; and c) a mechanism for disbursing the rental vouchers in a fiscally responsible manner on behalf of eligible offenders.

NEW RULE I defines "unable to secure" suitable housing in terms of having insufficient personal funds on hand to meet specified non-recurring initial reentry expenses and three months of specified recurring monthly living expenses including rent. In the experience of the department's probation and parole officers, it generally takes approximately three months for a reentering offender to secure stable employment and receive at least one full month's paycheck. The department reasoned that an offender's financial ability to pay rent when released is an illusory indicator of housing security if after paying rent the offender will have insufficient residual funds to meet non-recurring reentry expenses and other recurring monthly living expenses for three months. The eligibility criteria were established to avoid setting offenders up for failure and homelessness due to inability to sustain their living arrangement during the critical three months following re-entry. The average cost of rental housing varies widely from county to county in Montana. For purposes of calculating financial eligibility for rental voucher assistance, the department will use current HUD datasets for the Fair Market Rent (FMRs) Documentation System, specifically, the Montana statewide FMRs for a one-bedroom apartment, to obtain data related to the average cost of rent in the county in which the offender will live. The HUD data can be found at:

<https://www.huduser.gov/portal/datasets/fmr.html#2019>. When an eligible offender finds "suitable housing" in that county, the rental voucher will be in the amount of the offender's actual rent and not the county average. Therefore, value of the rental voucher benefit will vary from offender to offender even when the offenders reside in the same county. Housing options are limited for reentering offenders, and creating an artificial ceiling on the rent payable under the rental voucher program would exacerbate the problem. The rental voucher benefit is limited to three months and an offender may need to keep looking for more affordable housing before the period expires to ensure housing sustainability when the assistance is no longer available.

NEW RULE I also defines "suitable housing" as housing intended to be long-term or permanent thereby placing homeless shelters, hotels, and motels outside the scope of the definition. The department believes that housing offered to offenders by family members is generally intended to be a temporary arrangement. That conclusion would be supported if the family member does not regularly rent the premises to non-relatives in arm's length business transactions.

The rule allows the department to issue rental vouchers directly to a landlord on an eligible offender's behalf without creating either: 1) a landlord-tenant or other contractual relationship between the department and the landlord; or 2) an agency relationship between the department and an offender who is eligible for rental voucher assistance. The department must be fiscally responsible. Paying the landlord directly on an offender's behalf rather than paying the offender will help to ensure that rental voucher funds are not diverted by the offender for unauthorized purposes.

Ineligibility of pre-release center residents/participants for rental voucher assistance is self-explanatory in the rule text itself.

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: Kurt Aughney, Department of Corrections, 5 South Last Chance Gulch, P. O. Box 201301, Helena, Montana 59620; telephone (406) 444-0348; fax (406) 444-4920; or e-mail KAughney2@mt.gov, and must be received no later than 5:00 p.m., January 24, 2020.

5. Lorraine Schneider, Staff Attorney, Department of Corrections, has been designated to preside over and conduct the 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 the department division or program for which 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, apply and have been fulfilled. The primary bill sponsor was contacted by letter sent as attachment to an email on May 9, 2019.

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

/s/ Colleen E. Ambrose  
Colleen E. Ambrose  
Rule Reviewer

/s/ Reginald D. Michael  
Reginald D. Michael  
Director  
Department of Corrections

Certified to the Secretary of State December 17, 2019.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.29.1407 pertaining to the ) PROPOSED AMENDMENT  
description of a prosthesis for the )  
purpose of reopening medical benefits )  
in workers' compensation claims )

TO: All Concerned Persons

1. On January 24, 2020, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in conference rooms A and B of the Beck Building, 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 4:00 p.m., January 17, 2020, to advise us of the nature of the accommodation that you need. Please contact Cindy Zimmerman, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604; telephone (406) 444-1752; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail Cindy.Zimmerman@mt.gov.

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

24.29.1407 PROSTHETIC APPLIANCES DEVICES (1) For the purposes of identifying what constitutes a prosthesis not subject to the automatic 60-month closure of medical benefits under 39-71-704, MCA, the term "prosthesis" means, with respect to a body part or organ missing or damaged as the direct result of a workplace accident or occupational disease:

- (a) an artificial substitute to replace that body part or organ; or
- (b) a device to augment the functioning of that body part or organ.

(2) Examples of a prosthetic device include:

- (a) an artificial joint;
- (b) an artificial eye;
- (c) an artificial limb; and
- (d) an artificial tooth.

(3) Examples of a prosthetic device that augments function include:

- (a) prescription eye glasses;
- (b) prescription contact lenses;
- (c) dentures; and
- (d) hearing aids.

~~(1) Claims for furnishing replacement or repair of prosthetic appliances shall be paid to orthotists or prosthetists, who have been certified by the American Board~~

~~for Certification in Orthotics or Prosthetics, and whose services are performed in a certified facility.~~

~~(2) For services provided on or after July 1, 2011, claims must be paid in accordance with the utilization and treatment guidelines adopted by the department in ARM 24.29.1591.~~

AUTH: 39-71-203, MCA

IMP: 39-71-704, 39-71-717, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1407 in light of the department's recent receipt of certain petitions to reopen medical benefits pursuant to 39-71-717, MCA, related to hearing aids, and also in the context of the ruling of the Workers' Compensation Court in the case *Mellinger v. Montana State Fund*, 2018 MTWCC 13. The department initially notes that the existing version of ARM 24.29.1407 was originally adopted by the old Industrial Accident Board prior to 1973. At that time, a prosthesis was generally considered to be a mechanical device, such as an artificial limb. Since that time, the art and science of medical technology has grown, as has medical knowledge. Return to and maintenance of function are the cornerstones of the Montana Utilization and Treatment Guidelines. The department's medical director recently stated that an up-to-date definition of prosthesis more accurately encapsulates appropriate treatment options to address the functional consequences of certain occupational injuries and illnesses than a narrower definition. Based on that evolving medical view, the department, acting upon advice of its medical director, has determined that the scope of the current rule is an anachronism.

The department notes that the proposed definition of prosthesis is limited in its application to requests for reopening of medical benefits pursuant to 39-71-717, MCA, where the prosthesis is required because of the workplace injury or occupational disease. The proposed language of the rule in no way changes the exclusion of damage to a worker's eye glasses, contact lenses, dentures, or hearing aids provided for in 39-71-119, MCA, defining the terms accident and injury, nor does it affect the insurer's obligation for the repair or replacement of those items as provided by 39-71-704(1)(c), MCA.

An example of application of the proposed amendments would arise in the context of hearing aids furnished a worker due to hearing loss caused by occupational exposure to noise. The hearing loss is permanent, and the worker will need hearing aids for the rest of her or his life in order to reasonably function independently in the modern world. That need for working hearing aids will continue past the retirement age of the worker, due to the permanent nature of the hearing loss. Prior to the 60-month automatic closure of medical benefits provided for in 39-71-704(1)(f)(i), MCA (2011), an insurer would have automatically had an ongoing obligation as a primary medical service to pay for new hearing aid batteries and other maintenance related to the hearing aids. The department therefore concludes that there is reasonable necessity to amend ARM 24.29.1407.

Finally, there is reasonable necessity to amend the IMP citation for the rule to include the reference to 39-71-717, MCA, in light of the foregoing.

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 Cindy Zimmerman, Employment Relations Division, P.O. Box 8011, Helena, MT 59604; fax (406) 444-4140; or e-mail [Cindy.Zimmerman@mt.gov](mailto:Cindy.Zimmerman@mt.gov), and must be received no later than 5:00 p.m., January 31, 2020.

5. 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](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

6. An electronic copy of this notice of public hearing is available through the Secretary of State's web site at <https://sosmt.gov/arm/>. 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.

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 department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

9. The Office of Administrative Hearings, Department of Labor and Industry, has been designated to preside over and conduct this hearing.

/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 December 17, 2019.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.6.701 definitions, 32.6.702	)	AMENDMENT, ADOPTION AND
applications to be in writing;	)	REPEAL
inspection of plans and facilities prior	)	
to issuance of license, and 32.6.712	)	NO PUBLIC HEARING
food safety and inspection service	)	CONTEMPLATED
(meat, poultry), the adoption of NEW	)	
RULES I and II, and the repeal of	)	
ARM 32.6.703 through 32.6.711, and	)	
32.6.801 through 32.6.815.	)	

TO: All Concerned Persons

1. The Department of Livestock proposes to amend, adopt, and repeal the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on January 20, 2020, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.6.701 DEFINITIONS In this subchapter 7:

(1) ~~"Meat" means the edible part of the muscle of cattle, sheep, swine, goats or other animals, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and portions of the bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue, and which are not separated from it in the process of dressing. It does not include the muscles found in the lips, snout or ears.~~

(2) ~~"Meat by-product" means any edible part, other than meat, which has been derived from one or more cattle, sheep, swine or goats.~~

(3) (1) "Meat depot" means an facility establishment where meat or poultry, meat or poultry food products, and/ or meat or poultry by-products, intended capable for use as human food consumption, and intended for sale, are stored.

(4) ~~"Meat food product" means any article of food, or any article intended for or capable of being used as human food which is derived or prepared, in whole or in substantial and definite part from any portion of any cattle, sheep, swine or goats, except such articles as organotherapeutic substances, meat juice, meat extract, and~~



~~the like, which are only for medicinal purposes, and are advertised only to the medical profession.~~

~~(5) (2) "Meat p Packing house" means an establishment where meat or poultry, meat or poultry food products, and or meat or poultry by-products, intended for human consumption capable for use as human food, are prepared and/ or processed.~~

~~(6) "Mobile slaughter facility" is defined in 81-9-217, MCA.~~

~~(7) "Product" means any part or all of meat, meat by product, and/or meat food product.~~

~~(8) (3) "Slaughterhouse" means an establishment where animals are butchered for human consumption.~~

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-20-101, MCA

REASON: The department is proposing to amend this rule to simplify and clarify the definitions used. Montana Code Annotated (MCA) uses the term "meat depot" in 81-9-202, MCA, but does not provide a definition for the term. Currently, the rule includes a definition for the term "meat depot" that is overly broad because the definition includes everywhere that meat intended for human consumption is stored. This definition could be interpreted to include private homes, which is not the intent of the statute or rule. The department is proposing to update the definition of meat depot to include only those facilities storing meat that is intended for sale.

The rule also contains some terms already defined in MCA, the Federal Meat Inspection Act (21 U.S.C. 601), or sections of the Code of Federal Regulations (CFR) that the department has adopted by reference. These terms include meat, meat by-product, meat food product, mobile slaughter facility, and product. The department is proposing to remove the duplicate definitions from the rule.

Last, the department is proposing to add "or poultry" to the definitions for meat depot and packing house. Combining meat and poultry definitions into the same rule will allow the repeal of ARM 32.6.801 and simplify the definitions used in this subchapter.

32.6.702 APPLICATIONS TO BE IN WRITING; INSPECTION OF PLANS AND FACILITIES PRIOR TO ISSUANCE OF LICENSE

(1) Any person, firm, or corporation desiring to maintain or conduct a slaughterhouse, meat packing house, mobile slaughter facility, or meat depot shall file a written application for a license on a form to be provided by the Department of Livestock.

(2) A meat depot license is not required for facilities at physical locations that are licensed by a local public health authority and subject to onsite sanitary inspections by that authority.

~~(2) (3)~~ Complete drawings and specifications for remodeling establishments and for new structures must be submitted to the department, and approval obtained for the plans, in advance of construction.

(3) (4) No license for a slaughterhouse, meat packing house, mobile slaughter facility, or meat depot may be granted until a representative of the Montana Department of Livestock, ~~Meat, Milk, and Egg Inspection Division~~ has inspected the establishment, or facility, and premises proposed to be licensed, and has specified in writing, addressed to the applicants, the requirements for sanitation and necessary facilities for sanitary operation in conformity with the requirements of this subchapter.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-201, 81-9-217, 81-9-219, 81-9-220, 81-9-226, 81-9-227, 81-9-228, 81-9-229, 81-9-230, 81-9-231, 81-20-101, MCA

REASON: The department is proposing to update this rule to include poultry as well as meat so that ARM 32.6.802 can be repealed. Combining meat and poultry into one subsection will reduce the number of rules governing meat and poultry inspection and simplify the regulations for ease of use by the industry.

This rule is also being updated to create an exemption to the meat depot license requirement for facilities that are already licensed by a local public health authority and subject to sanitary inspections by that authority. This exemption is to avoid putting an undue regulatory burden on businesses that are already subject to licensing and oversight by a public health authority.

Retail businesses with a license through a local health authority would not be required to have a meat depot license.

#### 32.6.712 FOOD SAFETY AND INSPECTION SERVICE (MEAT, POULTRY)

(1) The Department of Livestock incorporates by reference ~~the following as they were effective August 22, 2016:~~

(a) through (3) remain the same.

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, MCA

REASON: The department is proposing incorporation by reference to reflect the current version of CFR and this update is necessary to ensure that Montana continues to maintain the at least equal to status required for operation of a state meat inspection program. The United States Department of Agriculture Food Safety and Inspection Services (FSIS) has extensive rules in the CFR governing meat and poultry inspection. To meet the at least equal standard for state meat inspection programs, the department is proposing to implement the relevant sections of the CFR by reference in ARM 32.6.712. Most recently ARM 32.6.712 was updated in 2016 to update the CFR references to the version of the federal rules as of August 22, 2016. FSIS has made several changes to CFR since then, so the rule now needs to be updated to reflect the current version of CFR.

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

NEW RULE I MEAT DEPOT REQUIREMENTS (1) The owners of a meat depot must:

(a) Operate and maintain the facility in a manner sufficient to prevent the creation of insanitary conditions and to ensure that product is not adulterated; this includes but is not limited to:

(i) Construct facilities in such a way to prevent the entrance of vermin, and have in place a pest management program that prevents the harborage and breeding of pests on the grounds and within the facility;

(ii) Control the climate and conditions under which product is stored in a manner appropriate for each type of product;

(iii) Store product in a secure manner that prevents unauthorized access to or tampering with product;

(iv) Keep facilities clean and in good repair;

(b) Store only meat and poultry products which are marked "inspected and passed" either by the state of Montana or the United States Department of Agriculture, Food Safety Inspection Service.

(c) Locate the meat depot so that it is accessible for inspection without entry into a private residence.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-201, 81-9-217, 81-9-219, 81-9-220, 81-9-226, 81-9-227, 81-9-229, 81-9-231, 81-20-101, MCA

REASON: The department is proposing to adopt this rule because meat depots are currently subject to the sanitation requirements in ARM 32.6.703 through 32.6.711 and 32.6.803 through 32.6.815, which are being repealed. The current rules could be unnecessarily burdensome for the low-risk storage of meat in a meat depot. For example, it is not necessary for meat depots to have specific plumbing and sewage installations, toilets, or the other extensive facilities required for establishments that process meat and poultry.

Other types of activities/operations currently covered by the rules recommended for repeal are also addressed by ARM 32.6.712 and the incorporated sections of the federal rules. As meat depots are not an entity included in the federal rules, New Rule I is necessary to address requirements for these facilities. This rule contains basic sanitation requirements to ensure product is stored under conditions that are not likely to lead to contamination or adulteration of product. This rule also clarifies an existing policy that meat depots may store only product that is "inspected and passed" by either the State of Montana or FSIS to ensure that product stored in a meat depot is eligible for both wholesale and retail use.

Additionally, this rule will clarify that a meat depot must be accessible for inspection without entry into a private residence to be consistent with agency policy that inspectors will not enter a private residence.

NEW RULE II RESTROOM FACILITIES (1) Operations required to provide dressing rooms, lavatories, or toilets must provide such facilities dedicated to the business and not located in a private residence, except:

(a) All operations with an active license as of January 1, 2020 are allowed to continue to operate with existing dressing rooms, lavatories, or toilets.

(2) To preserve the exception in (1)(a), an eligible license must be renewed annually with no change in ownership and no substantive modification of the existing facilities.

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, MCA

REASON: The department is proposing to adopt this rule to further clarify the requirements for bathroom facilities that are in 9 CFR 416.2(h), which is incorporated in ARM 32.6.712. These requirements apply to both custom exempt operations and official establishments. The federal rule states that bathrooms must be "conveniently located," but the definition of "convenient" is not included. This language has led to a situation in which some custom exempt operations have a bathroom that is in an adjacent private residence. It is the policy of Meat and Poultry Inspection Bureau (MPI) that inspectors will not enter a private residence, so MPI inspectors cannot determine if bathrooms in a private residence are maintained in a sanitary condition as required by regulation.

NEW RULE II clarifies that bathrooms for any licensed facility required to have a bathroom must be dedicated to the licensed business and may not be in a private residence. The rule provides an exception to allow the continued use of existing bathroom facilities for existing licensees. The rule also provides that whenever ownership of a facility changes or when a facility is substantively modified, for example through the construction of expanded facilities, the exception will no longer apply.

The adoption of a rule specifically addressing bathrooms in licensed facilities is necessary to ensure that department inspectors can conduct adequate sanitary inspections as required by regulation.

5. The department proposes to repeal the following rules:

32.6.703 SANITARY CONDITION REQUIREMENTS

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.704 SANITARY FACILITIES AND ACCOMMODATIONS: SPECIFIC REQUIREMENTS

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.705 EQUIPMENT TO BE EASILY CLEANED; INEDIBLE PRODUCTS  
EQUIPMENT TO BE MARKED

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.706 SCABBARDS FOR KNIVES

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.707 ROOMS, COMPARTMENTS, ETC., TO BE CLEAN AND  
SANITARY

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.708 OPERATIONS, PROCEDURES, ROOMS, CLOTHING, UTENSILS,  
ETC., TO BE CLEAN AND SANITARY

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.709 INEDIBLE OPERATING AND STORAGE ROOMS: OUTER  
PREMISES, DOCKS, DRIVEWAYS, APPROACHES: PENS, ALLEYS, ETC., FLY  
BREEDING MATERIAL: NUISANCES

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.710 EMPLOYMENT OF DISEASED PERSONS

AUTH: 81-2-102, 81-2-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.711 DISPOSAL OF OFFAL, PAUNCH CONTENTS, AND OTHER  
VISCERA

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.801 DEFINITIONS

AUTH: 81-2-102, 81-20-101, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, MCA

32.6.802 APPLICATION; INSPECTION OF PLANS AND FACILITIES PRIOR TO ISSUANCE OF LICENSE

AUTH: 81-20-102, 81-9-220, 81-9-201, 81-9-217, 81-9-219, 81-9-220, 81-9-226, 81-9-227, 81-9-228, 81-9-229, 81-9-230, 81-9-231, MCA  
IMP: 81-2-102, 81-20-101, MCA

32.6.803 ESTABLISHMENT OR FACILITY

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA  
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.804 ROOMS AND COMPARTMENTS

AUTH: 81-2-102, 81-20-101, 81-9-220, MCA  
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.805 FLOORS, WALLS, CEILINGS, ETC.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA  
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.806 BLOOD DISPOSAL

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA  
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.807 DRAINING AND PLUMBING

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA  
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.808 WATER SUPPLY

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA  
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.809 LAVATORY ACCOMMODATIONS

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA  
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.810 LIGHTING AND VENTILATION

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA  
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.811 EQUIPMENT AND UTENSILS

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA  
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.812 RESTRICTION ON USE OF EQUIPMENT AND UTENSILS

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA  
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.813 ACCESSIBILITY FOR CLEANING

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA  
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.814 CLEANING ROOMS AND COMPARTMENTS

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA  
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.815 CLEANING OF EQUIPMENT AND UTENSILS

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA  
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

REASON: The department is proposing to repeal ARM 32.6.703 through 32.6.711, and 32.6.801 through 32.6.815 to remove unnecessarily burdensome requirements, to avoid duplication and conflict between rules, and to simplify regulatory requirements.

6. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., January 24, 2020.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the same above address no later than 5:00 p.m., January 24, 2020.

8. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held

at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 28 persons based on 281 currently licensed custom exempts and meat storage depots.

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

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

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

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

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

Certified to the Secretary of State December 17, 2019.



BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.4.502 importation of	)	AMENDMENT
restricted or prohibited alternative	)	
livestock and 32.4.1309 import	)	NO PUBLIC HEARING
requirements for cervids	)	CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on January 20, 2020, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.4.502 IMPORTATION OF RESTRICTED OR PROHIBITED  
ALTERNATIVE LIVESTOCK (1) through (1)(b) remain the same.

(c) ~~Wild or captive elk, mule deer, and whitetail deer may not be imported or transported from a geographic area or alternative livestock farm where chronic wasting disease is endemic or has been diagnosed unless they meet all importation requirements, transportation requirements and any other requirements mandated by statute, rule or order of the state veterinarian under the authority of Title 81, chapter 2, MCA.~~ Importation of wild or captive elk, mule deer, and whitetail deer into Montana, except direct to slaughter, is restricted except pursuant to a diagnostic technique and test protocol for the antemortem detection of chronic wasting disease that is approved by the state veterinarian. No animal may be imported from a geographic area or alternative livestock area where chronic wasting disease is endemic or has been diagnosed ever.

(2) through (4) remain the same.

AUTH: 81-2-102, 81-2-103, 87-4-422, MCA

IMP: 81-2-102, 81-2-103, 87-4-422, MCA

REASON: The department is proposing to amend this rule because of the risk of Chronic Wasting disease (CWD) to Montana's captive cervid industry. The amendment would prohibit the importation of cervids to Montana for reasons other than slaughter until an acceptable antemortem test for CWD becomes available. In

FY18, there were 15 detections of CWD in farmed cervid herds in the United States. Of these 15 affected herds (11 white-tailed deer, 2 elk, 1 reindeer, 1 mixed), 7 herds or 47% were certified herds in approved CWD Herd Certification Programs (HCP). One additional positive herd participated in an approved CWD HCP. In FY19, there were 19 detections of CWD in farmed cervid herds (9 white-tailed deer, 6 elk, 2 mixed). Of these, 9 or 47% were certified herds.

Because of the number of CWD positive certified herds, the department is concerned that participation in an approved HCP, even at the certified level, is not sufficient to prevent the movement of a CWD positive animal across state lines. Because of the long incubation period of the disease, recent disease introductions, even in long-certified herds, may go undetected prior to animal movement across state lines.

The incidence and geographic distribution of CWD in wildlife is unknown in much of the country due to limited or absent wildlife surveillance. As of August 2019, there were 277 counties in 24 states with reported CWD in free-ranging cervids. That number is continuing to grow. The department does not believe that limiting importation of captive cervids to areas or counties where CWD has not been diagnosed adequately addresses the risk of importing a CWD positive animal, as the disease may exist in an area or county and remain undetected.

The USDA CWD Program Standards outline the required response to a detection of CWD and require both CWD-Positive and CWD Exposed Herds be quarantined for five years beyond the last exposure to a CWD-positive animal. The importation of an animal found to be CWD positive post importation would have a significant impact on the Montana producer. This impact would include long-term quarantine, potential herd depopulation, increased labor requirements, and financial loss.

32.4.1309 IMPORT REQUIREMENTS FOR CERVIDS (1) and (2) remain the same.

(3) The state veterinarian may deny importation from states that do not meet the following requirements:

(a) The state of origin must have the legal means of control ~~and/or~~ disposition of CWD affected, exposed or trace herds;

(b) the state of origin must have the power and authority to quarantine CWD affected, exposed or trace herds; ~~and~~

(c) if CWD has been confirmed in any herds within the state of origin, the state veterinarian of that state must have completed an epidemiological investigation and identified all CWD affected, exposed or trace herds; ~~and~~

(d) no confirmed cases of CWD in wildlife as established by a wildlife surveillance program that the state veterinarian determines is equivalent to or more robust than Montana's program.

(4) remains the same.

AUTH: 81-2-102, 81-2-103, 87-4-422, MCA

IMP: 81-2-102, 81-2-103, 87-4-422, MCA

REASON: See the reason for the proposed amendment to ARM 32.4.502. The department proposes this amendment to address the potential risk of importing CWD positive animals in the absence of an approved antemortem test. This proposed amendment was originally included as part of MAR Notice No. 32-19-298, but is included in this notice to address public comment received in response to that notice and to incorporate the additional information in the department's reason for the proposed amendment.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., January 24, 2020.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., January 24, 2020.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the businesses who are 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 3, based upon approximately 30 current producers who hold an active alternative livestock license.

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

8. 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.

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

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

Certified to the Secretary of State December 17, 2019.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 32.24.450 milk control ) AMENDMENT  
assessments )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. The Board of Milk Control (board), which is administratively attached to the Department of Livestock, proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on January 17, 2020, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.24.450 MILK CONTROL ASSESSMENTS (1) Pursuant to 81-23-202, MCA, the following assessments are levied upon the Act licensees of this department for the purpose of securing funds to administer and enforce the Act.

(a) A fee of \$0.055 ~~\$0.06~~ per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of all milk subject to the Act produced and sold by a producer-distributor.

(b) A fee of \$0.0275 ~~\$0.03~~ per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of all milk subject to the Act sold by a producer.

(c) A fee of \$0.0275 ~~\$0.03~~ per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of milk subject to the Act sold by a distributor, excepting that which is sold to another distributor. If the distributor is foreign, the assessment must be paid either by the foreign distributor or by the import jobber.

(2) through (6) remain the same.

AUTH: 81-23-102, 81-23-104, 81-23-202, MCA  
IMP: 81-1-102, 81-23-103, 81-23-202, MCA

REASON: The board proposes to amend the above-stated rule:

- to raise sufficient revenue to provide for the administration of Title 81, chapter 23, MCA, as proposed for Fiscal Year 2021; and
- to ensure assessments are commensurate with the costs as required by 81-1-102(2), MCA, while maintaining a reasonable cash balance in the related special revenue fund to ensure solvency.

The proposed amendments to ARM 32.24.450 would affect approximately 118 businesses licensed by the Milk Control Bureau.

The proposed assessment rates would decrease milk control assessment revenue by approximately \$22,000.

4. The board intends to adopt the proposed amendment effective July 1, 2020.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., January 24, 2020.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as in 5 above. The written request for hearing must be received no later than 5:00 p.m., January 24, 2020.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 12, based upon there being approximately 118 businesses licensed by the Milk Control Bureau that are currently operating.

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 5 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, 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 rule will not significantly and directly impact small businesses.

/s/ W. Scott Mitchell  
W. Scott Mitchell  
Chair  
Board of Milk Control

/s/ Cinda Young-Eichenfels  
Cinda Young-Eichenfels  
Rule Reviewer  
Department of Livestock

Certified to the Secretary of State December 17, 2019.

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

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

TO: All Concerned Persons

1. On November 8, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-899 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1973 of the 2019 Montana Administrative Register, Issue Number 21.

2. A public hearing on the notice of proposed amendment of the above-stated rule was held on December 2, 2019. The public comment period is being extended to 5:00 p.m. on January 3, 2020, to allow interested persons additional time to comment on the proposed amendment of the above-referenced rule. The department has published proposed fee schedules that incorporate procedure codes that were recently published by the Centers for Medicare and Medicaid Services and that the department is required to follow. The proposed fee schedules are posted at: <https://medicaidprovider.mt.gov/proposedfs>.

3. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on January 2, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, 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](mailto:dphhslegal@mt.gov).

4. Written data, views, or arguments may be submitted to: Heidi Clark, 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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., January 3, 2020.

/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 December 17, 2019.



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

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 37.108.507 pertaining to update	)	AMENDMENT
of the Healthcare Effectiveness Data	)	
and Information Set (HEDIS)	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to amend the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on January 10, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

37.108.507 COMPONENTS OF QUALITY ASSESSMENT ACTIVITIES

(1) Annually, the health carrier shall evaluate its quality assessment activities by using the following HEDIS ~~2019~~ 2020 measures:

(a) through (3) remain the same.

(4) The department adopts and incorporates by reference the HEDIS ~~2019~~ 2020 measures for the categories listed in (1)(a) through (e). The HEDIS ~~2019~~ 2020 measures are developed by the National Committee for Quality Assurance and provide a standardized mechanism for measuring and comparing the quality of services offered by managed care health plans. Copies of HEDIS ~~2019~~ 2020 measures are available from the National Committee for Quality Assurance, 1100 13th St. NW, Suite 1000, Washington, D.C. 20005 or at [www.ncqa.org](http://www.ncqa.org).

AUTH: 33-36-105, MCA

IMP: 33-36-105, 33-36-302, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Managed Care Plan Network Adequacy and Quality Assurance Act (Title 33, chapter 36, MCA) establishes standards for health carriers offering managed

care plans and for the implementation of quality assurance standards in administrative rules. ARM 37.108.501 through ARM 37.108.521 were adopted in 2001 and established mechanisms for the department to evaluate quality assurance activities of health carriers providing managed care plans in Montana. ARM 37.108.507 requires health carriers to report their quality assessment activities to the department using healthcare effectiveness data and information set (HEDIS) measures, nationally utilized measures that are updated annually. Since the HEDIS standards change somewhat each year, ARM 37.108.507 must be updated annually to reflect the current year's measures and ensure that national comparisons are possible, since other states will be using the same updated measures.

The option of not updating the HEDIS measures was considered and rejected because these are national quality measures which allow comparisons among health plans. If the measures are not kept current, this function is lost.

#### Changes to HEDIS 2020 Measures

- (1) Childhood Immunization Status (CIS)
  - (a) Modified value sets to make them compatible with digital measure formatting.
  - (b) Added live attenuated influenza vaccine (LAIV) as numerator compliant for the influenza rate.
  - (c) Reformatted/reorganized the MMR numerator (MMR numerator requirements were not changed).
  - (d) Added the *Rules for Allowable Adjustments of HEDIS* section.
- (2) Breast Cancer Screening (BCS)
  - (a) Modified value sets to make them compatible with digital measure formatting.
  - (b) Updated value sets used to identify advanced illness.
  - (c) Deleted value set combinations for unilateral mastectomy where laterality (bilateral, left, right) is not specified.
  - (d) Added the *Rules for Allowable Adjustments of HEDIS* section.
  - (e) For measures collected using electronic clinical systems (BSC-E) first-year ECDS version of the measure.
- (3) Cervical Cancer Screening (CCS)
  - (a) Updated screening methods to include primary high-risk human papillomavirus testing.
  - (b) Modified value sets to make them compatible with digital measure formatting.
  - (c) Updated the Hybrid specification to indicate that sample size reduction is not allowed.
  - (d) Added the *Rules for Allowable Adjustments of HEDIS* section.
- (4) Comprehensive Diabetes Care (CDC)
  - (a) Modified value sets to make them compatible with digital measure formatting.
  - (b) Removed "with or without a telehealth modifier" language; refer to *General Guideline 43*.

- (c) Updated value sets to identify acute and nonacute inpatient events for the event/diagnosis.
- (d) Updated value sets used to identify advanced illness.
- (e) Updated value sets to identify IVD acute inpatient events.
- (f) Updated value sets to identify thoracic aortic aneurysm inpatient events.
- (g) Clarified telehealth requirements.
- (h) Removed the telehealth exclusion from ESRD.
- (i) Reformatted the denominator of the Hybrid Specification.
- (j) Added the *Rules for Allowable Adjustments of HEDIS* section.
- (5) HEDIS/Consumer Assessment of Health Plan Survey (CAHPS) Health Plan Survey 5.0H, Adult Version
  - (a) This measure is collected using survey methodology. Detailed specifications and summary of changes are contained in HEDIS 2020, Volume 3: Specifications for Survey Measures.

Corrections, policy changes, and clarifications to HEDIS 2020, Volume 2, Technical Specifications

- (1) Childhood Immunization Status:
  - (a) Administrative Specification – Numerators, MMR.
    - (i) Replace the second bullet with the following text (do not delete the dashed sub-bullets below the second bullet): At least one measles and rubella vaccination (Measles Rubella Immunization Value Set; Measles Rubella Vaccine Procedure Value Set) on or between the child's first and second birthdays **and** one of the following:
- (2) Comprehensive Diabetes Care
  - (a) Administrative Specification – Numerators, HbA1c Poor Control >9%.
    - (i) Add the following rows to the table:
      - (1) HbA1c Level Greater Than or Equal To 7.0 and Less Than 8.0 Value Set – Not compliant
      - (2) HbA1c Level Greater Than or Equal To 8.0 and Less Than or Equal To 9.0 Value Set – Not compliant
    - (a) Administrative Specification – Numerators, HbA1c Control <8%.
      - (i) Add the following rows to the table:
        - (1) HbA1c Level Greater Than or Equal To 7.0 and Less Than 8.0 Value Set – Not compliant
        - (2) HbA1c Level Greater Than or Equal To 8.0 and Less Than or Equal To 9.0 Value Set – Compliant
      - (c) Administrative Specification – Numerators, HbA1c Control <7% for a Selected Population
        - (i) Add the following rows to the table:
          - (1) HbA1c Level Greater Than or Equal To 7.0 and Less Than 8.0 Value Set – Not compliant
          - (2) HbA1c Level Greater Than or Equal To 8.0 and Less Than or Equal To 9.0 Value Set – Not compliant
        - (d) Exclusions

(i) Replace the first sentence of the dashed sub-bullet, which reads, "At least one acute inpatient discharge with an advanced illness diagnosis (Advanced Illness Value Set)."

with "At least one acute inpatient discharge with an advanced illness diagnosis (Advanced Illness Value Set) on the discharge claim."

(e) Exclusions

(i) In the first dashed sub-bullet under "2", replace "(instructions below)" with "(instructions below; the diagnosis must be on the discharge claim.)"

5. The department intends to adopt these rule amendments to be applied retroactively to January 1, 2020. There is no negative impact to the affected health insurance company applying the rule amendment retroactively.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Heidi Clark, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on January 24, 2020. Comments may also be faxed to (406) 444-9744 or e-mailed to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Heidi Clark at the above address no later than 5:00 p.m., January 24, 2020.

8. If the agency receives requests for a public hearing on the proposed action from either 10% 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 1 person based on the one health insurance provider affected by this proposed rule amendment.

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

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

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

/s/ Flint Murfitt  
Flint Murfitt  
Rule Reviewer

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

Certified to the Secretary of State December 17, 2019.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) AMENDED NOTICE OF PUBLIC  
ARM 42.21.154, 42.21.155, ) HEARING ON PROPOSED  
42.21.158, and 42.22.1311 pertaining ) AMENDMENT  
to trended depreciation schedules for )  
valuing personal property )

TO: All Concerned Persons

1. On October 18, 2019, the Department of Revenue (department) published MAR Notice No. 42-1007 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1838 of the 2019 Montana Administrative Register, Issue Number 20. The department held the required public hearing on November 13, 2019. No proponents were present, no proponent oral testimony was received, and the department received no written comments in support. Bob Story of the Montana Taxpayer's Association appeared as the only opponent to the rulemaking and provided oral and written comments. A written comment was also received by the department from state Representative Llew Jones, which the department answered directly to Representative Jones.

2. Upon additional review of the Proposed 2020 Personal Property Depreciation Schedules and Trend Tables publication, the department has identified errors in the Industrial Machinery and Equipment Trend Table Lookup located on page 18 of the publication. The errors for 11 of the industry descriptions were made when the expected life values were entered while reformatting the lookup table for the web version of the 2019 Personal Property Depreciation Schedules and Trend Tables publication. The correct expected life values for the 11 industry descriptions were correctly provided in ARM 42.22.1311 and in the computer assisted mass appraisal (CAMA) system used for the 2019 personal property valuation cycle.

The proposed life expectancy revisions to the Industrial Machinery and Equipment Trend Table Lookup will result in no changes in how these types of equipment were valued in prior years.

Based on the discovery of these errors, it is necessary for the department to post a Revised Proposed 2020 Personal Property Depreciation Schedules and Trend Tables publication on the department's internet website at <http://www.mtrevenue.gov>, which illustrates the corrections to the above-described table.

The department is extending the comment period for this proposed rulemaking in accordance with 2-4-305, MCA, as described in paragraph 5. All other rule amendments contained in the original MAR notice described in paragraph 1 remain as proposed.

3. The Department of Revenue will make reasonable accommodations for persons with disabilities who 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 January 3, 2020. 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](mailto:todd.olson@mt.gov).

4. No additional public hearing will be held to consider this amended proposal notice.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed rulemaking 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](mailto:todd.olson@mt.gov) and must be received no later than January 10, 2020.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Gene Walborn  
Gene Walborn  
Director of Revenue

Certified to the Secretary of State December 17, 2019.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.12.301, 42.12.302, and	)	PROPOSED AMENDMENT AND
42.12.307, and the repeal of ARM	)	REPEAL
42.12.303 and 42.12.306 pertaining	)	
to resort areas, resort determinations,	)	
and resort licenses	)	

TO: All Concerned Persons

1. On January 22, 2020, 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 January 3, 2020. 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](mailto:todd.olson@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The 2019 Montana Legislature passed Senate Bill 358 (SB 358), which became law on May 7, 2019. SB 358 adopts and implements 16-4-211 through 16-4-213, MCA, amends other statutes located in Title 16, chapter 4, MCA, and repeals 16-4-202, MCA, pertaining to resort areas, resort determinations, and resort licenses.

The department finds it necessary to propose amendments to ARM 42.12.301, 42.12.302, and 42.12.307, and to repeal ARM 42.12.303 and 42.12.306 to implement SB 358. Generally, the department proposes amendments to the rules which reflect changes in legislative policy, how resort areas are determined, resort license application and hearing processes, and resort area operations. Several internal reference and implementing citation amendments are also proposed throughout the rulemaking which are necessary for the administrative rules to align with SB 358's new statutes or statutory amendments.

While this general statement of reasonable necessity covers the basis for the following proposed rulemaking actions, it is supplemented below to explain rule-specific changes.

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



42.12.301 RESORT LICENSES (1) The issuance of resort all-beverages licenses pursuant to ~~16-4-202~~ 16-4-213, MCA, is governed by all other applicable provisions of Title 16, MCA, and the rules of the department.

~~(2) A resort area, as determined by the department, includes establishments whose business and operation is designed to attract and accommodate visitors to a recreational development. The primary purpose of the recreational development must not be the sale of alcoholic beverages. The department shall consider economic factors in the approval of a proposed "resort area" and whether the recreational development is designed to stimulate and promote the recreational and sporting industry.~~

(3) ~~(2)~~ Other non-resort licenses are allowed within a defined resort area and such licenses are not considered for purposes of determining the number of allowable resort all-beverages licenses.

~~(4) For the purposes of 16-4-202, MCA, accommodation units are a type of lodging in which the unit can be separately locked by the occupant and contains sleeping, bathing, and toilet facilities. The primary purpose of such units must be to accommodate visitors.~~

(3) The delivery of alcoholic beverages to guests staying in accommodation units located on the resort area is permissible provided the employees of the holder of the resort license deliver the alcoholic beverages.

(4) The delivery of alcoholic beverages to resort area accommodation units on a resort area is not permissible:

(a) by any non-resort licensee whose business is located on the resort area;

(b) to any other location on the resort area other than accommodation units; or

(c) where otherwise prohibited by retail sales restrictions provided in Title 16, chapters 3, 4, and 6, MCA.

(5) The licensee shall maintain records of all alcoholic beverage deliveries made on the resort area. The delivery records must be retained for three years. The records shall include:

(a) the date and time the delivery occurred;

(b) the quantities and brands of alcoholic beverages delivered;

(c) the address of the accommodation unit;

(d) the name of the employee delivering the alcoholic beverages; and

(e) the name of the individual who accepted the alcoholic beverages at the time of delivery.

AUTH: 16-1-303, MCA

IMP: 16-4-201, ~~16-4-202~~ 16-4-213, MCA

REASONABLE NECESSITY: Section (1) proposes to replace a statutory authority reference which is necessary because 16-4-202, MCA, was repealed in SB 358.

Sections (2) and (4) are proposed to be stricken because the purpose of resort areas and the definition of accommodation units are provided in 16-4-211 and 16-4-213, MCA, respectively. This content does not need to be repeated in rule. Section (3) will be renumbered as (2).

Proposed (3), (4), and (5) contain operating conditions requirements for resort

licensees where the delivery of alcoholic beverages is permitted to accommodation units. Section 16-4-213, MCA provides that the delivery of alcoholic beverages is allowed to accommodation units on the designated resort area only if the purchaser is present, the purchaser's age is verified, and the purchaser is not intoxicated. In these sections, the department proposes to clarify the necessity of how the deliveries need to occur to comply with statute. Section (3) proposes to require the resort licensee to use their own employees to deliver the alcoholic beverages. Employees of any licensee are required to comply with the Responsible Alcohol Sales and Service Act. Requiring the resort licensee's employees to deliver the alcoholic beverages is necessary and consistent with state-approved processes for confirming an individual's age and whether the individual is intoxicated. Section (4) proposes to list prohibited alcoholic beverages delivery examples because delivery of alcoholic beverages is limited to accommodation units which are defined as short-term guest rentals. Providing examples of impermissible deliveries is necessary to detail the department's policy regarding how a licensee conducts alcoholic beverage deliveries. Section (5) proposes to establish requirements for delivery records retention. The department believes the records retention requirements are necessary because alcoholic beverage delivery is a new privilege to any retail licensee, and the department believes the sales and delivery records retention support a resort licensee's delivery requirements compliance. The list of items included in (5)(a) through (e) are proposed to confirm compliance.

42.12.302 DEFINITIONS The following definitions apply to this subchapter: (1) through (7) remain the same.

AUTH: 16-1-201, 16-1-303, MCA

IMP: 16-1-201, 16-4-201, ~~16-4-202~~ 16-4-213, 16-4-301, MCA

42.12.307 RESORT AREA DETERMINATION APPLICATION PROCESS

~~(1) As required by 16-4-202, MCA, the department must schedule a hearing within seven days of receipt of the resort plat.~~

~~(2) The following plat documents are necessary to determine if the resort area meets the minimum requirements to schedule a hearing:~~

~~(1) A developer or landowner seeking a resort area designation shall submit to the department:~~

~~(a) a completed application for resort area determination;~~

~~(b) the resort a plat verified as accurate by the resort area developer or landowner or master plan of the resort area;~~

~~(c) an appraisal of the resort area from an appraiser attesting to the value details of the recreational resort facilities that are or will be within the resort area, as that definition is described in ARM 42.12.302;~~

~~(d) processing fees as provided in ARM 42.12.111; and~~

~~(e) financial statement of resort developer and all known operators of proposed establishments within the resort area; and~~

~~(f) (e) overall plan for resort development including a statement from resort developer verifying control of the resort area any additional information the department may request.~~

(2) The valuation must be not less than \$1,000,000, and at least half of which valuation must be for a structure or structures within the resort area.

(3) The department shall determine the appraised market value of the resort area.

(4) If the developer or landowner disagrees with the department's determination of actual market value, the applicant can submit its own appraisal for department consideration.

~~(3) (5) If the documents in (2) (1) above are not provided, the department will notify the applicant developer or landowner of the missing items and request submission by a specific deadline prior to the hearing date. If the documents are not received timely, the application will be returned and not considered for licensing.~~

~~(4) If the documents in (2) above are provided, a hearing will be scheduled and public notice will be provided as required in 16-4-202, MCA.~~

AUTH: 16-1-303, MCA

IMP: ~~16-4-202~~ 16-4-212, 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 42.12.307 as follows:

Current (1) is proposed to be stricken because 16-4-212, MCA, now provides when the department must schedule a hearing and this reference is obsolete. The department proposes to strike current (2) and replace it with proposed (1) to list the required documents and information that must be submitted for a resort area determination. These requirements are currently located in ARM 42.12.306 and described in 16-4-212, MCA. The department proposes to repeal ARM 42.12.306 and include all required information within this rule, which the department believes is necessary for ease of reference and clarity about procedural requirements.

The department proposes (2) to reiterate the statutory requirement in 16-4-212, MCA, regarding the valuation threshold of resort area structures. The department believes this intentional redundancy is necessary for ease of applicant referencing since most department processes are found in administrative rule. The department also believes the reference to structure or structures in rule are necessary because the term "structure" is found in ARM 42.12.301 and the department intends to maintain that definition for consistency.

Section (3) proposes to require the department to appraise the market value of the resort area. The department believes this amendment necessary because the department employs individuals specialized in appraising property, and by placing the obligation on the department and its data, this may reduce developer or landowner appraisal costs.

Section (4) proposes to allow the developer or landowner the opportunity to submit its own appraisal if they disagree with the department's appraisal, which the department believes is necessary in the event of a dispute regarding the department's valuation of the resort area.

Section (5) is proposed for amendment to reference "developer" or "landowner" rather than "applicant," which is consistent with the resort statutes. The department proposes to clarify the necessity that additional documentation

requested by the department must be received prior to the hearing.

5. The department proposes to repeal the following rules:

42.12.303 APPRAISAL

AUTH: 16-1-303, MCA

IMP: 16-4-201, 16-4-202, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.12.303 and incorporating the content into ARM 42.12.307. The department believes the repeal necessary because rule content pertaining to appraisals of proposed resort areas is better fitted in ARM 42.12.307 which is about resort areas.

42.12.306 FINANCIAL RESPONSIBILITY

AUTH: 16-1-303, MCA

IMP: 16-4-201, 16-4-202, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.12.306 and incorporating the content into ARM 42.12.307. The department believes the repeal necessary because rule content pertaining to the required information for determination of a resort areas is better fitted in ARM 42.12.307 which is about resort areas.

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: 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](mailto:todd.olson@mt.gov) and must be received no later than January 31, 2020.

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

8. 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 6 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.

9. An electronic copy of this notice is available on the department's web site at [www.mtrevenue.gov](http://www.mtrevenue.gov), or through the Secretary of State's web site at [sosmt.gov/ARM/register](http://sosmt.gov/ARM/register).

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on August 8, 2019 and on December 6, 2019.

11. 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 December 17, 2019.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.23.211, 42.23.607, ) PROPOSED AMENDMENT  
42.23.702, 42.23.801, 42.23.802, and )  
42.26.311 pertaining to net operating )  
loss carryback and water's edge rules )  
revisions )

TO: All Concerned Persons

1. On January 22, 2020, at 1:00 p.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 January 3, 2020. 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:

42.23.211 USE OF SEPARATE ACCOUNTING METHOD (1) In applying the separate accounting method, each item of income is segregated and directly allocated according to its source. Any expense or other deductible items, including a reasonable allowance for general overhead expenses, attributable to the earning of such income are likewise segregated and deducted from such income. Items of ~~non-business~~ nonapportionable income are to be allocated as provided for under 15-31-304, MCA.

AUTH: 15-31-313, 15-31-501, MCA  
IMP: Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: The department proposes a housekeeping amendment to ARM 42.23.211 by replacing the term "nonbusiness income" with "nonapportionable income" which is necessary to align rule language with 15-1-601, MCA, revised by the 2017 Montana Legislature.

42.23.607 COMPUTATION OF QUARTERLY ESTIMATED TAX UNDER-PAYMENT INTEREST (1) and (2) remain the same.

(3) If estimated payments are required and those payments are insufficient, not submitted, or are not submitted timely, the ~~12 percent per annum~~ underpayment interest provided in 15-1-216, MCA, will be computed on the lesser of 80% of the current year's liability or 100% of last year's liability, provided that the last year was a period of 12 months and the corporation filed a return.

AUTH: 15-31-501, MCA  
IMP: 15-1-216, 15-31-510 MCA

REASONABLE NECESSITY: The department proposes a housekeeping amendment to ARM 42.23.607(3) to strike the underpayment interest amount, because it is provided in statute, and the cross-reference to the statute regarding the application of interest on an under payment of tax is sufficient. The department's amendment to (3) is necessary for clarity and brevity to direct taxpayers to the governing law.

42.23.702 TAXATION OF A LIMITED LIABILITY COMPANY (1) and (2) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA  
IMP: 15-31-101, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.23.702 to include 15-31-501 and 15-30-2620, MCA, as authorizing statutes pertaining to corporate income tax and individual income tax, respectively. Including these authorities directs a taxpayer to the department's rule making authority and conforms the rule to the requirements of 2-4-305, MCA.

42.23.801 NET OPERATING LOSSES (1) ~~The net operating loss deduction is allowed in accordance with the IRC (1954), as amended, for taxable periods ending on or before December 31, 1970. For taxable periods which begin on and after January 1, 1971, t~~The net operating loss deduction is allowed as provided in the rules contained in this subchapter.

(2) remains the same.

AUTH: 15-31-501, MCA  
IMP: 15-31-114, MCA

REASONABLE NECESSITY: Based on the department's review of its administrative rules, the department proposes a housekeeping amendment to ARM 42.23.801 which is necessary to remove outdated language.

42.23.802 CARRYOVERS OF NET OPERATING LOSSES (1) remains the same.

(2) For taxable periods beginning after December 31, 2017, a net operating loss is carried back to the third preceding taxable period from which it was incurred. Any balance remaining must be carried to the second preceding taxable period, then

to the first preceding taxable period, and then forward to the next ten succeeding taxable periods in the order of their occurrence. A net operating loss carryback provided in this subsection may not exceed \$500,000 per taxable period. If a combined report that is filed includes more than one entity with Montana activity, the total net operating loss carryback for all entities cannot exceed \$500,000 per taxable period.

(3) and (4) remain the same.

(5) ~~For taxable periods beginning after December 31, 1988, a~~ A taxpayer may elect to forgo the entire carryback period. Montana corporate income tax Form CIT provides an area to perfect this election. When Form CIT is filed with the department, the election must be clearly marked in the area provided on that form. If no indication is made in the area provided on Form CIT, the net operating loss will be carried back and applied as provided in (1) and (2). For state purposes, an election to forgo a federal net operating loss carryback provision will not be accepted as a valid election.

(6) If a taxpayer files an amended Montana return under 15-31-506, MCA, and reports a net operating loss, the time to perfect the election in (5) may be extended. If the taxpayer failed to make the election on its originally filed return, and the original return reported net income, an election may be made by filing an amended return if it is clearly marked in the area provided on the return. If more than one amended return is filed for a taxable period, the election must be made on the first return reporting a net operating loss.

AUTH: 15-31-501, MCA

IMP: 15-31-119, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.23.802 to provide guidance to taxpayers on the net operating loss carryback limitation, which reflects amendments to 15-31-119, MCA, by the 2017 Montana Legislature. The proposed language addresses the carryback limitation for taxpayers filing a combined report with more than one entity reporting Montana activity.

The department also proposes amending this rule to add language providing guidance to taxpayers on the election to forgo a net operating loss carryback provided in 15-31-119(11), MCA, when an amended Montana return is filed under 15-31-506, MCA. The proposed language is intended to be informational and supports the department's long-standing practice of allowing an election to forgo a net operating loss carryback clearly marked in the area provided on an amended Montana return if the original return filed by the taxpayer did not make the election and reported net income.

Lastly, and based on the department's review of the rule, the department proposes a housekeeping amendment at the beginning of (5) which is necessary to remove outdated language.

42.26.311 CERTAIN CORPORATIONS INCLUDABLE IN A WATER'S-EDGE COMBINED RETURN (1) remains the same.

(2) A corporation incorporated outside the United States, if over 50 percent of the voting stock is owned directly or indirectly by a member of the includable group



and if more than 20 percent of the average of its payroll and property, including payroll and property from disregarded entities and its pro rata share of unitary partnerships' payroll and property, is assignable to a location inside the United States, is included in a water's-edge return. For purposes of computing this average, the payroll factor provided for by 15-31-308, MCA, and the property factor as provided for by 15-31-306, MCA, shall be added together and divided by two, or by one if the denominator of either the property or payroll factor is zero.

(3) through (5) remain the same.

AUTH: 15-31-501, MCA

IMP: 15-31-322, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.26.311 to clarify for taxpayers which corporations are includable in a water's-edge combined return. The additional language clarifies how corporations are determined for inclusion in a water's-edge combined report because it includes unitary partnerships and disregarded entities in that determination. The proposed language is intended to be informational and the department believes is necessary for clarification of the department's long-standing practice.

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](mailto:todd.olson@mt.gov) and must be received no later than 5:00 p.m., January 31, 2020.

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](http://www.mtrevenue.gov), or through the Secretary of State's web site at [sosmt.gov/ARM/register](http://sosmt.gov/ARM/register).

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/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Gene Walborn  
Gene Walborn  
Director of Revenue

Certified to the Secretary of State December 17, 2019.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rule I pertaining to limited all- ) PROPOSED ADOPTION  
beverages licenses for continuing )  
care retirement communities )

TO: All Concerned Persons

1. On January 22, 2020 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 adoption 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 January 3, 2020. 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](mailto:todd.olson@mt.gov).

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

NEW RULE I LIMITED ALL-BEVERAGES LICENSE FOR CONTINUING CARE RETIREMENT COMMUNITY - PREMISES SUITABILITY REQUIREMENTS AND CONDITIONS FOR OPERATING (1) The department shall determine the suitability of the premises when a continuing care retirement community applies to obtain a limited all-beverage license provided in 16-4-315, MCA, changes the location where the license will be operated, or makes alterations to the department-approved premises. The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department.

(2) The continuing care retirement community premises may be considered suitable only if:

- (a) the applicant or licensee has possessory interest in the premises;
- (b) the applicant or licensee has adequate control over the premises;
- (c) no other license authorized under Title 16, MCA, will be operated concurrently at the premises;
- (d) the premises are identified by a unique address;
- (e) the premises are located within one building or a specific portion of one building. The interior of the premises must be a continuous area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants;
- (f) building, health, and fire code approvals are obtained;

(g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access;

(h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;

(i) the premises complies with the licensing restrictions provided in 16-3-306, MCA;

(j) there are no signs, posters, or advertisements displayed on the exterior of the premises that identify any brewer, beer importer, or wholesaler in any manner. This prohibition extends to buildings adjacent to the premises only if the retailer has possessory interest in the adjacent building. This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA;

(k) the floor plan accurately states the dimensions of the premises, includes the applicant or licensee's name; alcoholic beverage license number, if applicable; physical address and date of application; and identifies the central dining area, any stationary drink preparation area, and any storage areas. A plat of the continuing care retirement community campus must also be provided to the department that shows the campus boundaries and any other structures located on the campus;

(l) the interior of the premises includes at least one stationary drink preparation area. The central dining area may have more than one drink preparation area, including moveable drink preparation areas, subject to department approval;

(m) all storage areas are located in the interior of the premises;

(n) alcoholic beverages will not be sold through a drive-up window;

(o) the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any drink preparation area; and

(p) self-service devices and vending machines are not used to serve alcoholic beverages.

(3) The premises must meet and maintain compliance with all suitability standards in place at the time the premises was last approved by the department. The department may, at any time, verify that the premises remain in compliance with those suitability standards. Upon determining that the premises does not meet all applicable suitability standards, the department may deny an application or take administrative action against the licensee, including license revocation.

(4) The licensee shall follow the process in ARM 42.13.106 for a premises alteration. Alterations to residential areas or other areas where alcoholic beverages are not sold or served from do not require submittal or approval from the department.

(5) In addition to all other alcoholic beverage licensing requirements, a limited all-beverages continuing care retirement community licensee shall:

(a) only purchase and possess on the premises liquor and fortified wine from an agency liquor store, beer from a beer wholesaler or brewery, and table wine from a table wine distributor or winery, except for alcoholic beverages obtained elsewhere by residents of the continuing care retirement community for consumption in residential areas;

(b) sell or serve alcoholic beverages only from an approved drink preparation

area;

(c) prevent the sale or service of alcoholic beverages between 8 p.m. and 11 a.m.;

(d) prevent the consumption or possession of alcoholic beverages outside of residential areas between 2 a.m. and 11 a.m. by removing all alcoholic beverages from individuals' possession by 2 a.m.;

(e) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age, or actually, apparently, or obviously intoxicated, in accordance with 16-3-301, MCA; and

(f) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises except for alcoholic beverages obtained elsewhere by residents of the continuing care retirement community for consumption in residential areas.

AUTH: 16-1-303, 16-4-315, MCA

IMP: 16-3-244, 16-3-309, 16-3-311, 16-4-315, 16-4-402, 16-4-405, 16-6-303, MCA

**REASONABLE NECESSITY:** The department proposes to adopt New Rule I to implement 16-4-315, MCA, enacted under House Bill 613 by the 2019 Montana Legislature, which created a new quota-exempt limited all-beverages license for continuing care retirement communities. Adopting a new rule to address license-specific premises suitability requirements and conditions for operating is necessary because general suitability requirements and the conditions for operating an all-beverage license in ARM 42.12.145 and 42.13.1102 are not all applicable or need modification for this new license type.

Section (1) is proposed, similarly to ARM 42.12.145(1), to provide general authority and circumstances involving the department's determinations of a premises' suitability. The department believes (1) is necessary as an introductory part of the rule.

Section (2) proposes a list of requirements that must be met for the premises to be approved, which is necessary for developing premises-specific requirements for licensure.

The proposed requirements in (2)(a) through (j) are restatements of long-standing premises requirements from statute and rule that apply to on-premises alcoholic beverages license types, except where expressly provided elsewhere. The department believes the restatements of requirements are necessary as this new license type is bound to the same regulatory system as other license types, with exceptions or unique operating conditions provided in 16-4-315, MCA.

The department proposes (2)(k) to require that certain areas be labeled on the floor plan, which is necessary and consistent with licensing requirements for other alcoholic beverages licenses to enable department evaluation of premises suitability and alteration requests. However, since 16-4-315, MCA, also allows the consumption of alcoholic beverages on the campus of the continuing care retirement community, the department also proposes to require a plat of the entire campus, so it is readily determinable where the consumption of alcoholic beverages is allowed.

The department's proposal in (2)(l) requires the interior premises to have at least one stationary drink preparation area to comply with the requirement that all on-premises alcoholic beverages premises are recognizable as a place that offers alcoholic beverages for sale and consumption and to accurately identify on the floor plan the primary location where alcoholic beverages are prepared. The department proposes to allow additional drink preparation areas that are moveable to provide licensees the ability to serve residents in multiple locations of the central dining area.

The department's proposal in (2)(m) through (p) are restatements of long-standing alcoholic beverage service requirements from statute and rule that apply to on-premises alcoholic beverages license types. The department believes the restatements of requirements are necessary as this new license type is bound to the same regulatory system as other license types, with exceptions or unique operating conditions provided in 16-4-315, MCA.

Section (3) provides a requirement of the licensee that its premises must remain in compliance with the provisions of this rule that were in place at the time the premises was last approved by the department. This provision clarifies necessity for public safety and when, and under what circumstances, the department determined a licensee's premises suitable for licensure.

Section (4) provides the requirement that all alterations to the approved premises must follow the process described in ARM 42.13.106 that applies to other alcoholic beverage license types. This is provided to notify a licensee not to start an alteration to the premises without first seeking department approval. An exception to this requirement is proposed to include residential areas and other areas that are not a part of the licensed premises.

Section (5) proposes restatements of the statutory conditions a licensee must follow for operating a limited all-beverages license for a continuing care retirement community. The department believes the restatements of requirements are necessary as this new license type is bound to the same regulatory system as other license types, with exceptions or unique operating conditions provided in 16-4-315, MCA.

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](mailto:todd.olson@mt.gov) and must be received no later than 5:00 p.m., January 31, 2020.

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 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](http://www.mtrevenue.gov), or through the Secretary of State's web site at [sosmt.gov/ARM/register](http://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 December 11, 2019.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption 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 December 17, 2019.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New        ) NOTICE OF ADOPTION  
Rules I through IV pertaining to        )  
government sponsored enterprises,        )  
designated manager supervisory        )  
requirements, false, deceptive, or        )  
misleading advertising, and internet or        )  
electronic advertising        )

TO: All Concerned Persons

1. On November 8, 2019, the Department of Administration published MAR Notice No. 2-59-586 pertaining to the proposed adoption of the above-stated rules at page 1917 of the 2019 Montana Administrative Register, Issue Number 21.

2. No comments were received.

3. The department has adopted the following rules exactly as proposed: New Rule I (ARM 2.59.1756), New Rule II (ARM 2.59.1757), New Rule III (ARM 2.59.1758), and New Rule IV (ARM 2.59.1759).

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 December 17, 2019.



BEFORE THE CLASSIFICATION REVIEW COMMITTEE

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 6.6.8301 pertaining to )  
establishment, deletion, or revision of )  
classifications for various industries )  
for supplementing the NCCI Basic )  
Manual for Workers' Compensation )  
and Employers Liability )

TO: All Concerned Persons

1. On September 20, 2019, the Classification Review Committee published MAR Notice No. 6-260 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1548 of the 2019 Montana Administrative Register, Issue Number 18.
2. The committee has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ Mike Winsor  
Mike Winsor  
Rule Reviewer

/s/ Greg Rodifer  
Greg Rodifer  
Committee Chair

Certified to the Secretary of State December 17, 2019.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On November 8, 2019, the Department of Commerce published MAR Notice No. 8-94-175 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1926 of the 2019 Montana Administrative Register, Issue Number 21.

2. The department has adopted NEW RULE I (8.94.3101) and NEW RULE II (8.94.3102) as proposed.

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

COMMENT NO. 1: A commenter seeks clarification on when funds would be made available to grant recipients.

RESPONSE NO. 1: The legislature must approve projects and funding. In addition, the legislature will determine when funding will be available. The department will present its recommendations for grants to the legislature's appropriation committee prior to January 15, 2021.

COMMENT NO. 2: Comment was received requesting an additional level of grant allowing for smaller grant amounts to be requested and modeled on Humanities Montana "Opportunity Grants" allowing requests up to \$1,000. Such a design would allow the replacement of a window with an energy efficient pane and UV protection for exhibits.

RESPONSE NO. 2: There is no minimum amount required for grant requests or awards. The guidelines allow applications to include multiple needs. For example, a museum could upgrade one window or all windows, doorways, address accessibility, code improvements, add archival shelving, and acquire exhibit cases. The design of the program intends to provide flexibility to diverse project needs.

COMMENT NO. 3: Comment suggested looking at the Cultural and Aesthetic Grants Program application process as a model that addresses some of the disparity in capacity between larger and smaller organizations.

RESPONSE NO. 3: As instructed in SB 338, as the department drafted the program guidelines and application, it looked to other programs as examples, including the Montana Arts Council Cultural and Aesthetic Grants and the Treasure State Endowment Program (TSEP). Additionally, we looked at program examples from other states that offered comparable and successful models.

COMMENT NO. 4: Comments received that some of the requirements will make the program impossible for Montana's smaller museums, such as (1) requirement that organizations have documents like strategic plans, operating plans, and fully audited financials (2) reimbursement grant requires small museums to have the funds up front to get projects started (3) requirement that organizations go through full RFP process.

RESPONSE NO. 4: Organizations are not required to conduct strategic plans, operating plans, or fully audited financials to be eligible or competitive for grant funding in the program. As part of the application process, providing such materials when available helps to set the context of the institution and the project. The guidelines will be updated to clarify the language to accept financial audit or other similar financial information to determine financial need and capacity of the applicant. We recognize the great variance between Montana's museums and the resulting difference in planning needs of these diverse institutions. Applicants should feel comfortable submitting any plans created, whether that be a more succinct board-created annual strategy or a full-scale strategic plan. If a plan is not available, then an organization can articulate its goals in response to the application questions. We will consider adding clarification language in the program guidelines to encourage applicants to submit planning documents or provide information to identify how the project fits into the short- and long-term goals and plans of the organization.

Program reimbursement grants will not require funds up front. Project funds are dispersed by submitting draw requests and applicable invoices to the department for processing. Projects will have multiple draw requests, depending on the project size, timeline, and budget. While we do request time to process such draws, the department recognizes the need to expedite such requests as quickly as possible. The department will be in regular communication with each grant applicant and/or administrator throughout the startup process, draw requests, and close out process.

A full competitive request for proposal procurement process is not required or necessary for all projects. The required level of procurement depends on the value of services sought or products needed. For projects over \$50,000, applicants are eligible to include 10% of the funds requested toward the administration of the project, meaning a smaller museum could obtain funds that address facility needs and obtain project administrative support.

COMMENT NO. 5: Comment received that as part of the Museums Act, the Montana Historical Society will receive operating funds as they move forward with

their new building. Why not give the same assistance to the rest of Montana's museums?

RESPONSE NO. 5: SB 338 established specific criteria for the Montana Historic Preservation Grant program, which were used as the basis for these guidelines. Operating expenses do not appear to be related to the specific criteria established in the bill and are therefore not eligible.

COMMENT NO. 6: Comment received that the Department of Commerce offer some assistance in helping small museums prepare for and apply for these grants. Assistance with professional planning, financial audits, etc. would be greatly appreciated.

RESPONSE NO. 6: Similar to other technical assistance and grant programs in Commerce, the Montana Historic Preservation Grant program will provide technical support on the project and application process. While professional plans and financial audits are encouraged, they are not required; our technical assistance will help applicants identify other financial and technical resources available to strengthen the application and the overall project. Project related planning and administrative costs are eligible expenses for projects that are awarded \$50,000 or more.

COMMENT NO. 7: Comment received that the guidelines lean perhaps unduly toward infrastructure assistance, which is available through other state and federal programs, and especially private investors have access to such plus the ability to tap private capital markets. Museums require equipment and materials.

RESPONSE NO. 7: The aim of the guidelines and application is to meet the requirements of the legislation, including infrastructure, and opening eligibility to public and private applicants. Historic preservation projects typically are not eligible for most state and federal infrastructure programs. The draft guidelines consider eligible museum infrastructure to include materials, equipment, and upgrades that directly contribute to the preservation or directly impact the maintenance, display, or care of collections. The department will consider clarifying eligible activities in the guidelines to include more detail to better assist potential applicants.

COMMENT NO. 8: Comment received stating that overall we are pleased with what we see, and we are grateful that your department sought our input in creating the program framework and incorporated this input. Certainly, Commerce staff who worked hard on this have good instincts on the priority issues of historic preservation. Thank you.

RESPONSE NO. 8: Thank you for your comment.

COMMENT NO. 9: Comment received that funding should be capped at \$50,000 with a one-year waiting period. Funding should be targeted, as narrowly as statute will allow, to nonprofit and local government-subsidized museums and historic sites.

RESPONSE NO. 9: The guidelines aim to meet the requirements of the legislation in making both public and private entities eligible for grant funding. Non-profits are not required to have a match for the grant, while for-profits must demonstrate a match. The guidelines further aim to provide flexibility to a wide array of project types in diverse areas of Montana. Providing a higher capped amount allows for institutions to effectively address and resolve significant issues and reallocate funds to other operational needs. The department will consider clarifying the guidelines to request applicants provide a prioritized list of activities within an application, as applicable, to reflect an applicant's need.

COMMENT NO. 10: Comment received that funds should not be used for institutional operating funds.

RESPONSE NO. 10: SB 338 established suggested criteria for the Montana Historic Preservation Grant program, which were used as the basis for these guidelines. Operational funds and personnel services are not eligible activities.

COMMENT NO. 11: Comment received that capital improvements should be allowed up to the \$50,000 amount but needs beyond that should be met with local capital campaigns or other state and federal programs. The program will be overwhelmed if it tries to meet six-figure needs.

RESPONSE NO. 11: The guidelines aim to provide flexibility to a wide array of public and private project types that are solving the most critical of needs in diverse areas of Montana. The guidelines aim to enable grants to work in coordination with other private and public funding, including grants, tax credits, and loan financing. Collectively, this regional array of financing opportunities better positions Montana applicants for national opportunities with match dollars and leveraging potential. As our guidelines point out on page 3: "The program coordinates with wider historic preservation technical assistance available and utilizes the diversity of funds to address both the financial and preservation gaps of projects. The program funding invests in the critical point to help projects move forward, catalyzing local revitalization and economic growth."

COMMENT NO. 12: Comment received that funds should be eligible for museum exhibits, interpretive programs, promotions and marketing, events, advertising, paid internships, professional development, and travel.

RESPONSE NO. 12: SB 338 established suggested criteria for the Montana Historic Preservation Grant program, which were used as the basis for these guidelines. Exhibits, interpretive programs, promotions and marketing, events, advertising, paid internships, professional development, and travel do not appear to be related to the specific criteria established in the bill and are therefore not eligible. We recognize the importance of these needs of Montana's museums. As part of our program technical assistance, we will guide prospective applicants toward other private and public funding. The design of the MHPG program allows for

organizations to submit multiple and distinct needs in one application, allowing the organization to target other state, regional, and national funds in coordination. For example, a museum may apply for exhibit lighting and displays in combination with equipment directly connected to preservation of collections from the MHPG program while submitting for interpretive funding from a state and national grant opportunity.

COMMENT NO. 13: Comment received that the current rules are supported. They very much like and compliment the development of the grant program, especially the details that are noted for qualifying applications, clarifying the eligible projects, explaining the application submission process and the requirements that go along with it. Because these will ultimately seek and need legislative approval, we feel the guidelines need to be in this current form with some qualifications and a great deal of detail. This will allow a system that will be helpful in getting applications from across Montana, spark and assist our local rural museums, and hopefully keep tourists in our rural areas longer, where they will spend more dollars in our local economies.

RESPONSE NO. 13: Thank you for your comment.

COMMENT NO. 14: Comment received stating thanks to everyone involved with crafting the guidelines and the application information for this wonderful bill. The Department of Commerce and the Community Development Division has done a really good job of being very clear and straightforward with translating the goals of the legislation into a pretty understandable packet of information.

RESPONSE NO. 14: Thank you for your comment.

COMMENT NO. 15: Comment received stating a belief that this program has a tremendous capacity to assist local museums, heritage properties in large and small communities. Montana should be proud to have passed such forward-looking legislation.

RESPONSE NO. 15: Thank you for your comment.

COMMENT NO. 16: Comment received about concerns about some of these projects needing planning up front in order to have good applications to be considered though the process. Having planning funds available ahead of time, projects could identify underlying issues, and better prepare applications.

RESPONSE NO. 16: Planning is not a requirement for applicants and will not necessarily make a project application more competitive, although it does help to provide detail and context to an application. Planning is an eligible activity for projects over \$50,000 and up to 10% of the total grant requested. For project applicants determining that planning work should commence before MHPG funds are either applied for or dispersed, other state, federal, or private grant programs provide planning funds for feasibility studies or architectural reports. Other state,

federal, and private grant opportunities can assist with planning for historic buildings and can work in combination and coordination with MHPG funds.

COMMENT NO. 17: Comment received that some eligible projects have intangible values and may not rank as competitively with projects that more directly are income producing or have a substantial financial benefit and economic impact. Examples would be the Fire Tower in Helena or grain elevators in Hobson. Can there be an adjustment in the ranking so that economic development would take second place to the heritage value?

RESPONSE NO. 17: The guidelines were designed to balance both economic impact and heritage value, but not to position one in conflict with the other. The department recognizes the value of long-term economic impact as it relates to the impact of a historic preservation project and also understands that smaller historic preservation projects may not have a large number of jobs created to be competitive. While job creation is a critical factor, the department will consider updating the guidelines to better balance the ranking criteria to consider immediate job creation as well as long-term widespread economic impact.

COMMENT NO. 18: Comment received about the match requirements complimenting the fact that the match is optional and that it will probably result in more small projects coming forward with the hope that they can be awarded and more encouragement to the small museums and historical sites and rural places where that kind of match is harder to come by. For profit having cash match requirements makes all the sense in the world.

RESPONSE NO. 18: Thank you for your comment.

COMMENT NO. 19: Comment received that the program is going to have a tremendous impact. I really applaud the Department of Commerce for being broad in their inclusion of many kinds of properties that would all be eligible for these grants under the rubric of museums and historic properties.

RESPONSE NO. 19: Thank you for your comment.

COMMENT NO. 20: Comment received to encourage Commerce to provide pre-application workshops or webinars that educate applicants on best practices in preservation, grantees' legal responsibilities, and how best to communicate a scope of work in a grant application. Applicants' participation in these workshops should be a prerequisite for their applying. We also encourage ongoing job creation studies to safeguard the grant's future and be an asset to this and other programs such as Montana Main Street, that promote preservation as an economic development tool.

RESPONSE NO. 20: The department is planning an outreach strategy to engage the wide variety of potential eligible projects across the state and will announce technical assistance opportunities in the future. Job creation studies and other planning work are encouraged as part of these guidelines. The department has

received tremendous support from historic preservation and museum colleagues in spreading the word and receiving helpful input on the program.

COMMENT NO. 21: Comment received on the application, noting that drawings or annotated photos should be used to supplement written communication. It is also important to stress the need for unambiguous language that avoids either-or scenarios resulting in potentially open-ended use of state funds. The inevitable unanticipated situations should be handled with amendments. Because review and scoring committee members will likely not visit all applicant properties, numbered and labeled photos that correspond to photo number/location/direction plotted on site plan and floorplan photo keys will be important aids in understanding a property and project. A photographic basis for a scope of work is helpful in those inevitable offsite discussions between grantor and grantee.

RESPONSE NO. 21: The guidelines mention the requirement of photos on page 9, but a restatement of this requirement along with additional detail may be helpful to applicants and guide applicants to provide clear project descriptions. The department will consider editing the guidelines and application to better clarify this requirement and improve guidance to prospective applicants.

COMMENT NO. 22: Comment received suggesting that the Interiors' Standards for the Treatment of Historic Properties can be challenging to communicate and determine when a particular one would apply to a property. Suggestions to do the following:

- 1) Providing applicants links to the Department of Interior website on the Standards.
- 2) Preliminary consultation between the applicant and Commerce should precede an application and set expectations for which treatment would apply. SHPO suggested as a resource in this consultation.
- 3) Providing brief examples of these Standards, using familiar Montana places would help. For example:
  - a. Preservation is applied in places like Virginia City and Bannack, so that the passage of time and layers of history remain evident. The intent is to arrest decay, not to make buildings look new. The Preservation Standards are commonly used when a property's primary function is to interpret history.
  - b. Restoration is applied at the Original Governor's Mansion, which is depicted at a certain period of significance in the mansion's history. Certain features that were added to the mansion outside of that period of significance were removed, and historic or replica features were reintroduced. Restoration Standards are commonly used when a property's primary function is to interpret history.
  - c. Rehabilitation is applied to many of the historic properties we encounter daily, such as local businesses and government buildings.



Although rehabilitation sometimes involves the preservation of serviceable historic character-defining features and the restoration of missing features, the Rehabilitation Standards are more flexible than those for Preservation and Restoration. The Rehabilitation Standards accommodate a change in use, continuation of a historic use, and meeting current codes in a way that maintains the property's historic fabric and character.

- d. Each of the Standards asks planners to meet the historic property on the property's terms. None of them allows for damaging treatments or adaptations arbitrary to the property's historic integrity.

RESPONSE NO. 22: The department will consider incorporating links to the Department of Interior website and providing the above examples of the standards in the guidelines to support applicants. Department staff will provide support and technical assistance to assist applicants with submitting the most successful and competitive application related to their specific project. The department encourages all applicants to use other state or federal resources and technical assistance to enhance the proposed project.

COMMENT NO. 23: Comment received recommending switching the term nominations to National Register nominations.

RESPONSE NO. 23: The department will consider modifying the guidelines with this language.

/s/ Amy Barnes

Amy Barnes  
Rule Reviewer

/s/ Tara Rice

Tara Rice  
Director  
Department of Commerce

Certified to the Secretary of State December 17, 2019.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	CORRECTED NOTICE OF
Rule I, the amendment of ARM	)	ADOPTION
18.8.101 and 18.8.431, and the	)	
repeal of ARM 18.8.432 pertaining to	)	
Motor Carrier Services Maximum	)	
Allowable Weight and Wintertime and	)	
Durational Permits	)	

TO: All Concerned Persons

1. On July 26, 2019, the Department of Transportation published MAR Notice No. 18-176 pertaining to the proposed adoption, amendment, and repeal of the above-stated rules at page 1002 of the 2019 Montana Administrative Register, Issue Number 14. On September 20, 2019, the department published the notice of adoption, amendment, and repeal at page 1632 of the 2019 Montana Administrative Register, Issue Number 18.

2. The original proposal notice inadvertently omitted citation to 61-10-106 through 61-10-110, MCA as statutes being implemented by NEW RULE I, now ARM 18.8.605. The rule as amended in corrected form reads as follows, deleted matter interlined, new matter underlined:

18.8.605 WINTERTIME AND DURATIONAL PERMITS (1) through (4)  
remain as adopted.

AUTH: 61-10-155, MCA

IMP: 61-10-106, 61-10-107, 61-10-108, 61-10-109, 61-10-110, 61-10-125, MCA

3. The replacement pages for this corrected notice will be submitted to the Secretary of State on December 31, 2019.

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

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

Certified to the Secretary of State December 17, 2019.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.17.127 pertaining to )  
prevailing wage rates for public works )  
projects )

TO: All Concerned Persons

1. On October 18, 2019, the Department of Labor and Industry (department) published MAR Notice No. 24-17-350 regarding the public hearing on the proposed amendment of the above-stated rule, at page 1766 of the 2019 Montana Administrative Register, Issue Number 20.

2. On November 8, 2019, the department conducted a public hearing in Helena. Written comments were received during the public comment period.

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

COMMENT 1: Several commenters from eastern Montana questioned the current number of dispatch cities. Specifically, the commenters questioned why District 4 is the only district with one dispatch city, Billings. Citing prior discussions with the department on this matter, the commenters question the department's assertion in a May 21, 2019, letter to the commenters that "Sidney and Miles City don't have a sufficient number of local contractors or the local expertise to complete the designed projects."

RESPONSE 1: The initial number and location of dispatch cities were carefully selected in consultation with a workgroup of contractors and unions. Reasons for selecting dispatch cities at that time included, but were not limited to, the following: population, university locations, and from what locations heavy equipment operators and other specialty workers typically dispatched. During that time there was also a push to attract and retain quality workers to the construction industry while construction contractors were competing for labor with oil field contractors. The department determined that raising zone pay on public works contracts was one of the ways to address this issue and raise wages without raising wages across the board. The department has the flexibility to establish up to five districts and to have as many dispatch cities as the department deems advisable.

The department will consult with stakeholders regarding whether additional dispatch cities should be established in District 4.

COMMENT 2: A commenter who represents organized labor opposes the prevailing wage rates for all building Group 2 Laborers proposed in the amendments to ARM

24.17.127(1)(e), "Montana Prevailing Wage Rates for Building Construction Services 2020."

RESPONSE 2: Participation is the key driver in whether the rates increase or decrease and by what amount the rates increase or decrease. The total number of Group 2 Laborers in all districts reported during the survey period was 108, of which 15 (14%) were from union contractors. The department has reviewed the rate setting methodology for Group 2 Laborers in all districts and found all were set correctly pursuant to ARM 24.17.119.

COMMENT 3: A commenter generally spoke in favor of the amendments and the work done by the department to set the rates in the 2020 publications.

RESPONSE 3: The department acknowledges the comments.

COMMENT 4: A commenter questioned the inclusion of metal roofing under sheet metal workers in the "Montana Prevailing Wage Rates for Building Construction Services 2020" publication.

RESPONSE 4: The department has amended the "Montana Prevailing Wage Rates for Building Construction Services 2020" publication to remove "metal roofing" from Sheet Metal Workers and moved it to Roofers. The revision is reflected in paragraph 4 below.

4. The following occupations in the "Montana Prevailing Wage Rates for Building Construction Services 2020" Publication, p. 18, incorporated by reference in the rule, are amended as follows, stricken matter interlined, new matter underlined:

**SHEET METAL WORKERS**

**Duties Include:**

Testing and balancing, commissioning and retro-commissioning of all air-handling equipment and duct work. Manufacture, fabrication, assembling, installation, dismantling, and alteration of all HVAC systems, air conveyer systems, and exhaust systems. All lagging over insulation and all duct lining. ~~Metal roofing.~~

**ROOFERS**

**Duties Include:**

Metal roofing.

5. The department has amended ARM 24.17.127 as proposed.

6. The effective date for this rule is January 1, 2020.

/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 December 17, 2019.

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

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

TO: All Concerned Persons

1. On November 8, 2019, the Board of Personnel Appeals (board) published MAR Notice No. 24-26-351 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1948 of the 2019 Montana Administrative Register, Issue No. 21.

2. On December 3, 2019, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Many comments were received by the December 6, 2019, deadline.

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

COMMENT 1: Several commenters support the proposed amendments stating collective bargaining is an important employee right that has a long history in the state of Montana. The commenters believe unions are a positive part of the workplace, and they have had positive experiences working in unionized workplaces. The commenters believe that Montana workers should be allowed a fast and efficient process to form a collective bargaining unit to enjoy the benefits of union membership.

RESPONSE 1: The board acknowledges the comments.

COMMENT 2: Several commenters support the proposed amendments stating the amendments will allow faster and more-efficient certification of collective bargaining units. Several commenters noted that the current election and certification process for a new collective bargaining unit takes at least 62 days, and the process can often take longer, even without any opposition or filing of an employer's counter petition.

RESPONSE 2: The board acknowledges the comments.

COMMENT 3: One commenter specifically noted that, in the last year, one labor organization's efforts to certify new collective bargaining units before the board has taken 82 days, 71 days, 63 days, and 62 days from the date of the initial petition being filed and the date of certification by the board. The commenter noted that all of these petitions were supported by authorization cards from at least 66% of

employees in the proposed unit. The commenter contrasted this with the labor organization's efforts before the National Labor Relations Board (NLRB). This organization's efforts before the NLRB has taken only 40 and 34 days in the last year to petition and certify new collective bargaining units.

RESPONSE 3: The board acknowledges the comments.

COMMENT 4: Several commenters support the proposed amendments stating a faster certification process will benefit both employers and employees by allowing faster negotiations of a contract and quicker resolution of workplace concerns and conflicts. The commenters noted that the current process of election and certification of a new bargaining unit is unnecessarily costly, lengthy, complicated, and cumbersome for all parties involved.

RESPONSE 4: The board acknowledges the comments.

COMMENT 5: Commenters spoke in support of the amendments stating the changes provide a more-efficient process for the board to certify a bargaining unit, and this process will save the board time and resources.

RESPONSE 5: The board acknowledges the comments.

COMMENT 6: Several commenters support the proposed amendments stating the process allows the employees to choose the method of forming a collective bargaining unit: certification without an election by indicating this preference on their authorization cards or a traditional secret-ballot election.

RESPONSE 6: The board acknowledges the comments.

COMMENT 7: Several commenters support the amendments stating they allow employees to form a collective bargaining unit with only submission of an authorization card. The commenters noted that the current election process requires employees to express their support for unionization twice: first through the authorization card and second in the election. The commenters support the amendments because the current election process requires more than other local, state, or federal election processes.

RESPONSE 7: The board acknowledges the comments.

COMMENT 8: Several commenters support the amendments stating it is a fair process for all parties involved, and it maintains the opportunities for any opposing party to object.

RESPONSE 8: The board acknowledges the comments and notes under the amendments, an employer may still file a counter petition, other employees may still file a petition to intervene, and another labor organization may still file a petition to intervene.

COMMENT 9: A commenter supports the proposed amendments and stated that the amendments are statutorily authorized under 39-31-208, MCA, of the Bargaining Act, because if a majority of employees submit authorization cards in support of the collective bargaining unit, then there is no question of representation requiring an election. The commenter specifically noted that both employers and employees will benefit from the amendments because time is critical when addressing issues of salary, benefits, and working conditions.

RESPONSE 9: The board acknowledges the comments.

COMMENT 10: A commenter supports the amendments stating a faster process will benefit employees who may fear retaliation, and a faster process will reduce stress and uncertainty for both employers and employees.

RESPONSE 10: The board acknowledges the comments.

COMMENT 11: Several commenters support the proposed amendments stating a faster process will reduce the risk that employees who support a union will be harassed or treated unfairly during the certification process, noting that employees have the right under the Bargaining Act to "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection *free from interference, restraint, or coercion*." Section 39-31-201, MCA (emphasis added). These commenters emphasized that the proposed amendments will reduce strife and unrest, which is the purpose of the Act. The commenters indicated the long process sometimes results in harassment of employees who support unionization.

RESPONSE 11: The board acknowledges the comments.

COMMENT 12: Commenters support the proposed amendments stating a faster process will lead to less employee turnover. The commenters have witnessed employees leave employment due to a long election and certification process.

RESPONSE 12: The board acknowledges the comments.

COMMENT 13: A commenter supports the proposed amendments stating employees should be able to form a union in a simple and streamlined way. The commenter believes that unions are a benefit to an employer and employees, and unions give workers a positive outlook on their career paths.

RESPONSE 13: The board acknowledges the comments.

COMMENT 14: A commenter supports the proposed amendments stating a faster certification process will reduce the risk of divisiveness and conflict developing among employees and between the employees and the employer.

RESPONSE 14: The board acknowledges the comments.



COMMENT 15: Two commenters support the proposed amendments stating the signing of an authorization card is an important step, and public employees deserve to have their signing of an authorization card be given due weight as an expression of support for a union. The commenters state that collective bargaining allows public employees to join their voices together to carry important messages to their employers, address workplace issues, and move public industries forward. Public employees do important work for Montanans every day, and collective bargaining helps public employees grow so that they better serve the public. The commenters state the current process is also more work for the employer, disrupts employee morale, and creates an "atmosphere of inefficiency" at the job site.

RESPONSE 15: The board acknowledges the comments.

COMMENT 16: Two commenters argued the proposed amendments are beyond the board's statutory authority. The commenters asserted 39-31-207 and 39-31-209, MCA, require the board to conduct a hearing and an election if there is reasonable cause to believe that a question of representation exists, and the proposed amendments do not require that a hearing and election occur in every circumstance. The commenters also argued that determining there is no question of representation should require express legislative authorization. The commenters stated they believe the proposed amendments would likely lead to litigation.

RESPONSE 16: The board believes the commenters' arguments are an incorrect reading of the plain language of the statutes regarding the board's responsibilities. The board concludes that because the statutes only require the board to conduct an election when there is "reasonable cause to believe that a question of representation exists," the board has the authority to adopt rules which clarify when reasonable cause exists. Section 39-31-401, MCA. The board notes that if an election is mandatory in all instances, the language "reasonable cause to believe that a question exists" has no meaning because the board could not make any determination of reasonable cause. The board believes that when a majority of the authorization cards from the members of a proposed bargaining unit indicate a desire for representation, there is no "reasonable cause to believe that a question of representation exists." Therefore, there is no question about representation that requires an election to be conducted. The board notes that current rules implementing the statute demonstrate the board's authority by setting a minimum percentage of employee authorization cards required to hold an election and that the proposed amendments further implement the board's authority to decide if and how an election should proceed. The board notes that the possibility of litigation is present in most, if not virtually all, disputes that come before the board, and that parties routinely decide the costs and benefits of litigation.

COMMENT 17: Commenters asserted that if there is no election, then the new unit will not be protected by what they describe as an "election bar" under 39-31-210, MCA, that prevents the direction of any election for one year after an election. The commenters suggested that nothing in the rules prevents 30% of the employees in a

new unit from filing a petition for decertification immediately after the certification for a new unit without an election, but before a contract has been negotiated. The commenters are concerned that this will create confusion and further unrest between employees and employers.

RESPONSE 17: The proposed amendments will not allow an immediate filing of a petition for decertification as the commenters suggest. The current rules provide a specific window during which a petition for decertification can be filed based on the status of the bargaining unit's current collective bargaining agreement: "the petition [for decertification] *must be filed* during the 30-day window period which starts on the 90th day and ends on the 60th day prior to the termination date of the collective bargaining agreement, or after the terminal date thereof." ARM 24.26.643 (emphasis added). Therefore, a petition for decertification is not properly filed unless there is a collective bargaining agreement already in place. The commenters' concern for immediate filing of petitions for decertification after a certification without an election, but before negotiation of a contract, is incorrect under the rules.

COMMENT 18: A commenter raised concerns about the risk of fraud and forged signatures on authorization cards. The commenter questioned how the department will verify the authenticity of signatures on authorization cards and commented that there was no transparency or appeals process under ARM 24.26.655 to challenge the authenticity of signatures on authorization cards. The commenter questioned if employers would be able to inspect cards to verify their authenticity.

RESPONSE 18: The board disagrees that a risk of fraud would harm the process. First, if an employer questions the majority support for the union based only on the authorization cards, nothing in the proposed amendments prevents an employer from filing an employer counter petition under ARM 24.26.614. Under the proposed amendments to ARM 24.26.612, if an employer's counter petition is filed, a certification without an election will not occur and the election procedures will proceed under ARM 24.26.620. An employer counter petition effectively requests an election to prove the employee's majority support for a new collective bargaining unit. Furthermore, any labor organization or group of employees that question the majority support for a union based only on authorization cards may file a petition to intervene under ARM 24.26.618, in which case a certification without an election will not occur under the proposed amendments to ARM 24.26.612. Therefore, there is no need to alter the long-standing rules regarding the validation and confidentiality of authorization cards under ARM 24.26.604.

Second, validating authorization cards is currently and shall remain an act of the department that is not subject to review: "[t]he board shall consider the adequacy of the showing of interest and *such decision shall not be subject to challenge*," ARM 24.26.604(1) (emphasis added). This rule has been in effect since 1974, and this portion is not being changed in the proposed amendments. This rule is based on long-standing precedent of the National Labor Relations Board (NLRB) and the NLRB's interpretation of the National Labor Relations Act (NLRA), which the board looks to for guidance. *State ex rel. Dep't of Highways v. Pub. Emps. Craft Council*,

165 Mont. 349, 529 P.2d 785 (1974). Under the NLRB rules, the review of authorization cards for validity and authenticity is a ministerial act that is not subject to review. *In Re of O. D. Jennings & Co.*, 68 N.L.R.B. 516, 518 (1946).

Third, the confidentiality of authorization cards is currently required by and shall remain in the board rules, and authorization cards are not subject to review by the parties: "The proof of interest submitted with any petition shall not be furnished to any of the parties." ARM 24.26.604(1). This rule has also been in effect since 1974, and this portion is not being changed in the proposed amendments. This confidentiality is also based on long-standing NLRB precedent. *O. D. Jennings*, 68 N.L.R.B. at 518.

Finally, the NLRB does provide guidance on the use and validation of authorization cards. Certain circumstances and NLRB procedures allow for recognition of a new collective bargaining unit without an election based on authorization cards. For example, the United States Supreme Court case *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), and subsequent cases provide extensive guidance on the validity of authorization cards and on recognition of bargaining units without an election when there is evidence of a majority of support shown by authorization cards.

COMMENT 19: Commenters asserted that the amendments do not meet the stated purpose of saving time and resources because the amendments allow for a petition to intervene to be filed even if a majority of employees have already indicated support for one specific bargaining unit. They also stated that the proposed rule amendments appear to suggest that intervention petitions should also be eliminated, because if the authorization cards submitted by the majority are determinative of the question of representation, then no intervention petition would be successful.

RESPONSE 19: Under the current board rules, a petition to intervene may be filed by "any labor organization or group of employees," ARM 24.26.618(1), and it requires valid authorization cards from only ten percent of the employees in the proposed unit under ARM 24.26.618(3). As described in Response 3, under the proposed amendments, a valid petition to intervene from a minority of employees effectively requests an election to prove majority support for a new collective bargaining unit and/or for representation by a specific labor organization. The board believes it is important to maintain the intervention procedure as a means of maintaining public employees' "right of self-organization, to form, join, or assist any labor organization," or to not form, join, or assist any labor organization under the Bargaining Act, 39-31-201, MCA. The commenter also appears to misunderstand the application of the proposed amendments. Authorization cards from a majority of the members of the proposed unit will be recognized only if an employer counter petition or another labor organization's petition for intervention is not filed. If either of those conditions is present, a secret-ballot election will be conducted.

COMMENT 20: Commenters asserted that the amendments do not meet the stated purpose of saving time and resources because the amendments are limited to petitions for new unit determinations only. The commenters suggested that the

board should allow petitions for decertification to also be granted when there is a greater than 50% proof of interest, and that petitions to intervene should not be allowed in a petition for decertification without an election.

RESPONSE 20: The board acknowledges the comments. This suggestion for further amendment to the rules regarding decertification petitions is outside the scope of the current proposed amendments, but the board will consider this comment in future rules proposals. Please see Response 4 for discussion of petitions to intervene.

COMMENT 21: A commenter stated that because the rules allow the employer to file a counter petition, an employer could unilaterally delay the certification process with such a filing, and therefore the proposed amendments do not satisfy the stated reason for the amendments, to save time and resources.

RESPONSE 21: The board agrees that an employer could file a counter petition and thus unilaterally force an election under the proposed rule changes, and in that instance, time and resources would not be saved. However, the board is not convinced that every employer will inevitably file a counter petition, and believes that by adopting the proposed amendments the potential for saving time and resources exists. The board concludes that there is little down-side risk to allowing certification without a formal election, when the employer does not wish to force an election, given that the present rules require an election, whether one is requested or not.

COMMENT 22: A commenter opposed the amendments and argues that employees may be pressured into signing union authorization cards by other employees or union representatives.

RESPONSE 22: The board first notes that an employer who questions whether the majority of employees actually support the new collective bargaining unit may file an employer counter petition, which effectively requests a secret-ballot election to prove the employee's support for a new collective bargaining unit.

Furthermore, employees may choose not to exercise the rights guaranteed under the Bargaining Act, 39-31-201, MCA, and an employee who believes they have been restrained or coerced into supporting a labor organization may file an unfair labor practice with the board under 39-31-402, MCA. Finally, an employee may choose to sign an authorization card that does not contain an authorization to allow certification without an election.

COMMENT 23: A commenter opposed the amendments and argues that the amendments effectively create an "open ballot process," and this process will subject employees to harassment and intimidation by the employer or other employees.

RESPONSE 23: The board acknowledges the comments. The board believes that this process contains no greater risk of harassment and intimidation than the current

process that requires the signing of authorization cards in support of a petition for an election.

The board again notes that employees maintain the right not to exercise the rights guaranteed under the collective Bargaining Act, 39-31-201, MCA, and an employee who believes they have been restrained or coerced into supporting a labor organization may file an unfair labor practice with the board under 39-31-401, MCA, et seq.

COMMENT 24: Commenters opposed the amendments and argue that there is room for error in the proposed amendments stating authorization cards can be signed over a six-month period. The commenters questioned if the cards can be withdrawn or changed by the employee.

RESPONSE 24: Following the guidance of the NLRB, an authorization card can be revoked by an employee; however, the revocation may not be valid if there is an allegation that the card was revoked as a result of an unfair labor practice by the employer (e.g., coercion, threats, or intimidation). *Quality Markets, Inc.*, 160 NLRB 44, 44-46 (1966) *enfd* 387 F.2d 20 (3d Cir. 1967); *Warehouse Groceries Management, Inc.*, 254 NLRB 252, 254 (1981).

Under these amendments, if the revocation of cards by employees prior to certification without an election occurs, and the petition is then supported by less than 50% of the proposed bargaining unit but more than 30% of the proposed unit, then an election will proceed under the traditional board process.

COMMENT 25: Commenters opposed the amendments and argue that this process denies individuals the opportunity to share opinions with each other.

RESPONSE 25: The board believes that the process under the proposed amendments allows the opportunity for individuals to express opinions because the time for an intervention petition to be filed – ten days from the date of notice of union determination proceedings under ARM 24.26.618 – must pass before a new unit can be certified without an election. Furthermore, the amendments do not limit the ability of an employer to file an employer counter petition, and/or a minority group of employees or competing labor organization may file a petition to intervene. In addition, the signatures may be gathered over a six-month period, which is a significant amount of time for an employee to consider their decision.

COMMENT 26: A commenter opposed the amendments and argues that a secret-ballot election is more transparent and fair than the proposed amendments allowing the submission of authorization cards for certification without an election. The commenter expressed concern that these proposed amendments place too much authority in the hands of the board to authenticate and verify employees' support for a new collective bargaining unit. The commenter asserts that the election process upholds the integrity of collective bargaining by providing a structure that critics of collective bargaining cannot dispute.

RESPONSE 26: The board concludes that the proposed amendments are designed to make the election process more efficient in cases where there is already a clear majority of employees who support the proposed unit. Further, the board concludes the proposed amendments preserve the integrity of the collective bargaining process. The proposed amendments do not place more authority in the hands of the board or department than is placed on them under the current rules. As described in Responses 3, 6, and 9, the proposed amendments do not change an employer's ability to file a counter petition or a minority of employees' ability to file a petition to intervene, both of which will result in a secret-ballot election to prove majority support for a collective bargaining unit. The employer counter petition and petition to intervene serve to ensure the due process rights of all parties to collective bargaining. If neither an employer counter petition nor a petition to intervene is filed within the stated deadlines under the rules and the other requirements under the proposed amendments to ARM 24.26.612, only then does a bargaining unit get certified without an election. Finally, the board disagrees that the proposed changes undermine collective bargaining by allowing certification of a unit without an election. For example, in NLRB case law, a unit can be formed without an election when a majority of employees in the proposed unit have submitted authorization cards, but the actions of the employer have undermined the collective bargaining process through unfair labor practices making a fair election an impossibility. This process, and the proposed amendments here, seek to allow employee choice in representation in a fair and efficient way to further the purpose of the Bargaining Act. The board concludes the certification process provided for in the proposed amendments maintains employee choice and is an appropriate way for an employee to express their support for forming a new unit.

COMMENT 27: A commenter questions an employee's ability to understand that their authorization card can be used to certify a collective bargaining unit without an election under the proposed amendments to ARM 24.26.604.

RESPONSE 27: The 9th Circuit Court has held that if the language on an authorization card signed in support of an NLRB election is unambiguous, then there is a presumption that the signing employee understood the card. *NLRB v. Bakers of Paris, Inc.*, 929 F.2d 1427, 1442 (9th Cir. 1991) ("[t]he general rule is that if an authorization card is unambiguous, the employee is presumed to have understood it.") The board concludes that the proposed amendments to ARM 24.26.604(1)(e) require specific and clear language to avoid the ambiguity described by the 9th Circuit. The proposed amendments to ARM 24.26.604(1)(e) state that authorization cards used to gain certification without an election must contain language that "the employee understands that the employee's signature may be used to obtain certification in the named labor organization as the exclusive bargaining representative without an election."

Furthermore, the board notes that employees who do not understand the written language on an authorization card may be given a verbal explanation, or other

appropriate accommodation, to ensure understanding of the language on an authorization card. See *Bakers of Paris, Inc.*, 929 F.2d at 1442-44.

COMMENT 28: A commenter supports certification without an election, but opposes the amendments and suggests that in order to certify a bargaining unit without an election, a supermajority of authorization cards should be required. The commenter asserts that this will ensure that there is no question of representation.

RESPONSE 28: The board disagrees that a supermajority should be required and notes that no other state using this procedure requires a supermajority. Neither the commenter nor the board has identified any reference to a "supermajority" required to certify a collective bargaining unit in the Bargaining Act, the NLRB, or any other state that contains a similar rule for certification of a collective bargaining unit without an election, including New York, Oregon, or Illinois. The commenter does not otherwise define "supermajority." By contrast, "majority" is defined in the MCA as "the next whole number greater than half" in the statute defining quasi-judicial boards, 2-15-124, MCA, which includes this board, 2-15-1705, MCA. See also 1-2-107, MCA. ("Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.")

Furthermore, the NLRB has long held that a bargaining unit is certified based on a majority of the votes cast in the election; certification does not require a number of votes that represent a majority of the workers in the bargaining unit. *NLRB v. Standard Lime & Stone Co.*, 149 F.2d 435, 436 (4th Cir. 1945). ("[T]hose not participating in the election must be presumed to assent to the expressed will of the majority of those voting, so that such majority determines a choice.") In fact, the National Mediation Board, charged with implementing the federal Railway Labor Act, amended their election rules in 2010 to reflect the same election majority for certification required by the NLRB.

COMMENT 29: A commenter who generally opposes the amendments expressed concern that the proposed amendments will create more issues and conflicts than the amendments will solve. The commenter expressed doubt and concern that the NLRB will provide sufficient guidance on the issues that will be created under the proposed amendments.

RESPONSE 29: The board acknowledges the comments. The board notes that many resources are available for guidance in this area of law from the NLRB and other states that have adopted similar procedures to certify a collective bargaining unit without an election.

COMMENT 30: One commenter argued employees who sign authorization cards that allow certification without an election will not know if a petition to intervene is filed.

RESPONSE 30: The board notes this is incorrect, because the employee will be contacted for the election if a petition to intervene is filed.

COMMENT 31: A commenter who generally opposes the amendments stated the commenter appreciates that these amendments do not reference employer recognition, unlike a previous proposal of amendments to these rules.

RESPONSE 31: The board acknowledges the comments.

COMMENT 32: A commenter who generally opposes the amendments nonetheless appreciates and acknowledges that the current proposed amendments to the authorization cards require the card to contain an express statement that the card can be used to form a collective bargaining unit without an election. The commenter noted that a previous proposal did not contain this requirement for authorization cards, and the current proposal is an improvement.

RESPONSE 32: The board acknowledges the comments.

4. The board has amended the above-stated rules as proposed.

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 December 17, 2019.



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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.29.1616 pertaining to the )  
drug formulary in the Utilization and )  
Treatment Guidelines for Workers' )  
Compensation and Occupational )  
Disease )

TO: All Concerned Persons

1. On October 4, 2019, the Department of Labor and Industry (department) 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. On November 8, 2019, the department published an amended notice of public hearing and extension of comment period for MAR Notice No. 24-29-348 at page 1953 of the 2019 Montana Administrative Register, Issue Number 21.

3. The department held a public hearing on the proposed amendment of the above-stated rule in Helena on December 6, 2019. No members of the public commented on the proposed amendment at the public hearing. One written comment was received during the comment period.

4. A summary of the comment received and the department's response are as follows:

COMMENT 1: One comment was received in support of the proposed rulemaking.

RESPONSE 1: The department acknowledges the comment.

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State December 17, 2019.

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.111.301 definitions,	)	ADOPTION, AND REPEAL
24.111.510 certification for specialty	)	
practice of naturopathic childbirth	)	
attendance, 24.111.605 licensure of	)	
out-of-state applicants, 24.111.2103	)	
midwives continuing education	)	
requirements; the adoption of New	)	
Rule I minimum education and	)	
experience requirements for midwife	)	
and midwife apprentice applicants	)	
after January 1, 2020, New Rule II	)	
direct-entry midwife apprenticeship	)	
requirements for midwife apprentice	)	
applicants after January 1, 2020; and	)	
the repeal of 24.111.2101 renewals	)	

TO: All Concerned Persons

1. On September 20, 2019, the Board of Alternative Health Care (board) published MAR Notice No. 24-111-27 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1560 of the 2019 Montana Administrative Register, Issue No. 18.

2. On October 16, 2019, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. No comments were received by the October 18, 2019 deadline.

3. The board has amended ARM 24.111.301, 24.111.510, 24.111.605, and 24.111.2103 exactly as proposed.

4. The board has adopted New Rules I (24.111.606) and II (24.111.607) exactly as proposed.

5. The board has repealed ARM 24.111.2101 exactly as proposed.

BOARD OF ALTERNATIVE HEALTH CARE  
CHRISTINE WHITE, ND  
PRESIDING OFFICER

/s/ DARCEE L. MOE

Darcee L. Moe  
Rule Reviewer

/s/ GALEN HOLLENBAUGH

Galen Hollenbaugh, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 17, 2019.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.138.301 definitions,	)	ADOPTION, AND REPEAL
24.138.402 fees, 24.138.403	)	
mandatory certification, 24.138.406	)	
dental auxiliary functions, 24.138.419	)	
dental hygienist limited prescriptive	)	
authority, 24.138.502 dentist license	)	
by examination, 24.138.503 dental	)	
hygienists license by examination,	)	
24.138.505 dentist license by	)	
credentials, 24.138.506 dental	)	
hygienist license by credentials,	)	
24.138.507 dentist specialist license	)	
by credentials, 24.138.508 dental	)	
hygiene local anesthetic certification,	)	
24.138.509 dental hygiene limited	)	
access permit, 24.138.511 denturist	)	
license requirements, 24.138.512	)	
denturist internship, 24.138.514	)	
converting inactive to active status,	)	
24.138.525 reactivation of expired	)	
license, 24.138.2105 reporting	)	
procedures, 24.138.2301 dentist and	)	
dental hygienist unprofessional	)	
conduct, 24.138.2302 denturist	)	
unprofessional conduct, 24.138.3223,	)	
24.138.3225, and 24.138.3229	)	
anesthesia standards and continuing	)	
education; the adoption of New Rule I	)	
approved clinical exam criteria for	)	
dentists and dental hygienists, New	)	
Rule II denturist scope of practice –	)	
dentures over implants; and the repeal	)	
of 24.138.510 denturist examination	)	

TO: All Concerned Persons

1. On September 6, 2019, the Board of Dentistry (board) published MAR Notice No. 24-138-76 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1461 of the 2019 Montana Administrative Register, Issue No. 17.

2. On October 2, 2019, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Many comments were received by the October 4, 2019 deadline.

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

COMMENT 1: Multiple commenters suggested amending the definition of general supervision in ARM 24.138.301 as it applies to ARM 24.138.406 and the allowable functions of dental auxiliaries provided to current patients of record. Commenters also suggested revising ARM 24.138.406 to allow dental auxiliaries to work under the direct supervision of a Montana licensed dentist and specify in the rule the functions that auxiliaries can perform.

RESPONSE 1: The board intends to maintain a broad approach to the definition of general supervision and determined the in-person examination within six months by the supervising dentist was too restrictive. The board is amending ARM 24.138.301 as proposed. Due to multiple comments regarding the amendments to ARM 24.138.406, the board is not amending the rule at this time but will consider suggestions in a future rulemaking project.

COMMENT 2: Multiple commenters supported the amendments to ARM 24.138.419, allowing properly trained dental hygienists to apply silver diamine fluoride. One commenter also requested the board enforce existing rules concerning dental auxiliaries regarding air polishing and prophylaxis.

RESPONSE 2: The board enforces statute and rules through the complaint process.

COMMENT 3: One commenter requested expanding the denturist clinical internship options in ARM 24.138.511 and 24.138.512 to include any practitioner authorized to provide dentures/removables and dental surgery services under the Dental Practice Act.

RESPONSE 3: Section 37-29-303, MCA, specifies that the one-year internship must be completed under the direct supervision of a licensed denturist. Administrative rules must align with the implemented statute and the suggested change would have to be accomplished through the legislative process.

COMMENT 4: One commenter requested amending ARM 24.138.512 to allow internship experience gained under licensed denturists in other states.

RESPONSE 4: The board notes that that is one of the specific amendments proposed to this rule.

COMMENT 5: One commenter suggested the board allow licensed dentists as an option to provide direct supervision to a denturist applicant during a clinical internship under ARM 24.138.512 to provide a broader internship experience.

RESPONSE 5: Administrative rules must comply with the implemented statute, 37-29-303, MCA, which requires completion of an internship under a licensed denturist.

COMMENT 6: Multiple commenters supported the replacement of ARM 24.138.2302(1)(j) with New Rule II.

RESPONSE 6: The board is not proceeding with the adoption of New Rule II in this notice and is therefore not striking ARM 24.138.2302(1)(j).

COMMENT 7: One commenter stated that denturists do not prosper under the dental board and that denturists offer an alternative and Montana citizens voted to allow and regulate denturists. The commenter questioned sending denture impressions to a lab who never sees the patient.

RESPONSE 7: The board notes that the regulation of denturists is set in statute by the legislature and any change would have to be accomplished through the legislative process. The board is not proceeding with the adoption of New Rule II at this time and will consider the subject in a future rule proposal.

4. The board received numerous comments both opposing and supporting the proposed amendments to ARM 24.138.406. Following review and consideration of all comments, and due to concerns raised by the comments, the board has decided to not amend the rule at this time. The board anticipates conducting subsequent discussions to address the issues raised by the comments.

5. The board received numerous comments both opposing and supporting New Rule II. Following review and consideration of all comments, and due to concerns raised by the comments, the board has decided to not adopt the rule at this time. The board anticipates conducting subsequent discussions to address the issues raised by the comments.

6. The board has amended ARM 24.138.301, 24.138.402, 24.138.403, 24.138.419, 24.138.502, 24.138.503, 24.138.505, 24.138.506, 24.138.507, 24.138.508, 24.138.509, 24.138.511, 24.138.512, 24.138.514, 24.138.525, 24.138.2105, 24.138.2301, 24.138.3223, 24.138.3225, and 24.138.3229 exactly as proposed.

7. The board has adopted New Rule I (24.138.504) exactly as proposed.

8. The board has repealed ARM 24.138.510 exactly as proposed.

9. The board has amended ARM 24.138.2302 with the following changes, stricken matter interlined, new matter underlined:

24.138.2302 UNPROFESSIONAL CONDUCT FOR DENTURISTS

(1) through (1)(i) remain as proposed.

(i) fitting, attempting to fit or advertising to fit a prosthesis on or over a dental implant;

(j) and (k) remain as proposed but are renumbered (k) and (l).

10. The board did not amend ARM 24.138.406.

11. The board did not adopt New Rule II.

BOARD OF DENTISTRY  
AIMEE AMELINE, DDS  
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 December 17, 2019.

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

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

TO: All Concerned Persons

1. On August 23, 2019, the Board of Nursing (board) published MAR Notice No. 24-159-88 regarding the public hearing on the proposed adoption of the above-stated rule, at page 1270 of the 2019 Montana Administrative Register, Issue No. 16.

2. On September 13, 2019, a public hearing was held on the proposed adoption of the above-stated rule in Helena. No comments were received by the September 20, 2019 deadline.

3. The board has adopted New Rule I (24.159.667) exactly as proposed.

BOARD OF NURSING  
SHARON SWEENEY FEE, PHD, RN, CNE  
PRESIDENT

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

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

Certified to the Secretary of State December 17, 2019.



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

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.219.301, 24.219.415,	)	ADOPTION, AND REPEAL
24.219.421, 24.219.501, 24.219.504,	)	
24.219.505, 24.219.512, 24.219.601,	)	
24.219.604, 24.219.605, 24.219.612,	)	
24.219.701, 24.219.704, 24.219.705,	)	
24.219.712, 24.219.907, 24.219.912,	)	
24.219.923, 24.219.5005,	)	
24.219.5006, 24.219.5007,	)	
24.219.5008, 24.219.5010, and	)	
24.219.5013, the adoption of NEW	)	
RULES I through VII, and the repeal of	)	
24.219.506, 24.219.603, 24.219.703,	)	
24.219.707, 24.219.901, 24.219.902,	)	
24.219.903, 24.219.916, 24.219.5001,	)	
24.219.5003, 24.219.5004,	)	
24.219.5009, 24.219.5011, and	)	
24.219.5014, pertaining to application	)	
and licensing rules for licensed clinical	)	
social workers (LCSW), licensed	)	
clinical professional counselors	)	
(LCPC), licensed marriage and family	)	
therapists, (LMFT), licensed addiction	)	
counselors (LAC), and certified	)	
behavioral health peer support	)	
specialists (CBHPSS)	)	

TO: All Concerned Persons

1. On October 18, 2019, the Board of Behavioral Health (board) published MAR Notice No. 24-219-34 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1787 of the 2019 Montana Administrative Register, Issue No. 20.

2. On November 13, 2019, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Many comments were received by the November 15, 2019 deadline.

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

COMMENT 1: Multiple commenters stated they understood the intent of the rule changes and appreciated the board's efforts to update and streamline the administrative rules.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: Multiple commenters observed that "gambling dependence impulse control disorder" in ARM 24.219.301(14) does not conform with DSM-5 and recommended the board amend the rule to reference the appropriate definition of "gambling disorder."

RESPONSE 2: The term "gambling dependence impulse control disorder" is codified in Montana statute and can only be changed by the legislature. The board must use the statutory term in rule. However, the board notes the definition in (14) includes "or gambling disorder" to close the gap between statute and the DSM-5 as much as allowed. Further, the board is requesting permission to propose 2021 legislation to update the statutory language to conform with DSM-5 terminology.

COMMENT 3: Multiple commenters asked the board to eliminate the LCSW license requirement for reference letters in ARM 24.219.501(2)(e) since the board can use other elements of the application to assess applicant character. The commenters noted this may require a statutory change.

RESPONSE 3: The board agrees that a statutory change is needed to strike the reference letter requirement from 37-22-301(2), MCA. The board also agrees there are other methods to assess an applicant's character including personal history questions and the FBI fingerprint background check. The board is requesting permission to propose 2021 legislation to remove this requirement from statute.

**Comments 4 through 7 pertain to ARM 24.219.504:**

COMMENT 4: One commenter who is nearly finished with the supervised work experience needed to register for the national exam was concerned about the impact of the amendments to ARM 24.219.504 on LCSW licensure.

RESPONSE 4: The board is not changing the number of hours or the type of supervised work experience required for full LCSW licensure. Per the proposal notice, the board is reformatting and reorganizing the licensure rules for clarity and ease of use by licensees, educators, program administrators, and the public. The only change to the process itself is that candidates will no longer be required to submit all their supervision logs. New Rule I provides that candidates must maintain those records themselves for the seven-year period. To show proof of completion of hours, candidates and supervisors will continue with the current process of attesting to completion of required hours.

COMMENT 5: One commenter noted that the board's reason for amending ARM 24.219.504 was not to change the specific supervised work experience requirements for LCSW licensure but to clarify the current requirements by reformatting and rewording. The commenter opined that when striking (1)(b) and restating the supervised work experience requirement in (2)(a), the board inadvertently omitted the requirement that the 100 hours be "individual or group supervision." The commenter suggested the board correct this error by amending (2)(a).

RESPONSE 5: The board agrees and is amending the rule accordingly.

COMMENT 6: One commenter believed that LCSW candidates could be supervised for more than 50 hours by LCPCs and suggested the board amend (2) to allow LCPC licensees to supervise LCSW candidates for 100 of those hours.

RESPONSE 6: The board discussed this requirement at the August 2019 meeting prior to filing this rule proposal. The board determined it was necessary for public protection to require LCSW candidates be supervised for a minimum of those 50 hours by an LCSW. Social work is a very specifically defined practice and only an LCSW can properly supervise a candidate in this area. Additionally, the suggested amendment to the requirement exceeds the scope of the proposed changes and cannot be accomplished in a final notice.

COMMENT 7: Multiple commenters stated that "...chemically dependent" in (6) does not conform with DSM-5 and recommended the board amend the rule to reference the appropriate terminology and definition of "substance use disorder."

RESPONSE 7: The term "chemically dependent" is found in Montana statute and the board must use the statutory term in rule. The board is amending (6) to include reference to "substance use disorder."

COMMENT 8: Multiple commenters appreciate the board's commitment to consistency in licensing regulations and believed that six months should be sufficient for applicants to complete a Federal Bureau of Investigation fingerprint background check per ARM 24.219.505(2)(c).

RESPONSE 8: The board appreciates all comments received during the rulemaking process.

COMMENT 9: Multiple commenters recommended the board amend ARM 24.219.512(2)(d) to discontinue requiring reference letters for LCSW licensure since the board can use other elements of the application to assess applicant character. The commenters noted this may require a statutory change.

RESPONSE 9: See RESPONSE 3.

COMMENT 10: Multiple commenters asked the board to remove the statutory requirement for 60 and 45 credit hours from 37-23-202(1) and (2), MCA, as

referenced in ARM 24.219.601(2)(a). The commenters stated that prescriptive education requirements in statute have the unintended consequence of limiting the board's ability to adapt licensing requirements to reflect developing degree standards. The commenters recognized this as a statutory change and anticipated working with the board on a legislative strategy.

RESPONSE 10: The board is requesting permission to propose 2021 legislation to allow the board flexibility to set specific credit requirements through rulemaking for many of the reasons enumerated by commenters.

**Comments 11 and 12 pertain to ARM 24.219.604:**

COMMENT 11: A commenter asked if the one hour of face-to-face supervision for 20 hours of "counseling experience" in 37-23-102, MCA, refers to direct counseling hours and if candidates can receive one supervision hour in a week for 20 hours direct client contact and 20 indirect hours (paperwork, research, etc.) in a 40-hour work week.

RESPONSE 11: The board notes that 37-23-102, MCA, is the definitions statute and does not contain any of the language the commenter described. The referenced language is found in ARM 24.219.604 and cites to 37-23-202, MCA. Assuming the commenter meant 37-23-202, MCA, neither ARM 24.219.301 nor 24.219.604 defines "indirect hours." ARM 24.219.604(2) refers to all the 3000 supervised work experience hours that candidates are gaining under supervision.

COMMENT 12: Current rule requirements and the proposed amendments to (2) require supervisors provide at least one hour of face-to-face supervision and consultation for every 20 hours of professional counseling by a candidate. One commenter suggested the board change the face-to-face supervision ratio to either two hours for every 80 hours or four hours for every 160 hours.

RESPONSE 12: Changes to the number of hours of face-to-face supervision is outside the scope of the proposed changes and cannot be accomplished in a final notice. Depending on nationwide licensing and supervision trends in this area, the board may be open to stakeholder discussions regarding future rulemaking. However, the board's position is that frequent contact between supervisor and supervisee better protects the public since client situations can change rapidly.

**Comments 13 and 14 pertain to ARM 24.219.605:**

COMMENT 13: Multiple commenters stated they understood the premise for limiting degree credits to those earned in the six years prior to graduation in (2)(a)(ii) but also believe the six-year range limits the number of eligible applicants when there is a workforce shortage in Montana. The commenters believed this would exclude those who have a change in career later in life such as veterans, school-based counselors, etc. The commenters requested clarification for an alternative path to seeking candidate status or for the board to consider extending the six years to ten.

RESPONSE 13: The board did not propose changes to the six-year "expiration" of degree credits and is unable to accomplish this in a final notice. The board noted that at least one university in Montana adopts the policy that if someone returns for a graduate degree and the credits are older than six years from the graduation date, the individual is not allowed to count those hours without the faculty giving an exam to determine if a person can use those credits. If the faculty did grant permission then the transcript would reflect the new date that the course was approved by the faculty, not the original date. Depending on licensing trends in this area and research into other educational institutions' practices and policies, the board may be open to stakeholder discussions regarding future rulemaking.

COMMENT 14: Section (2)(d) requires applicants provide verification of all professional license(s) ever held in any state or jurisdiction. Multiple commenters questioned whether or not verification of the disclosure beyond the most recent state would unnecessarily delay entry into the workforce. The commenters suggested the board amend the rules to issue provisional licenses until the background checks are completed or the verifications received.

RESPONSE 14: All 31 licensing boards administratively attached to the department require official license verification for all professional licenses ever held by the applicants. The board is amending the rule simply to clarify the standard process. Additionally, 37-1-305(1)(d), MCA, allows boards to issue temporary practice permits to applicants that have requested verification and are not subject to pending charges or final disciplinary action. If the board or its screening panel later finds that the applicant falsely affirmed the other state's verification, the board may summarily suspend the permit pending further action.

Temporary permits do not apply to applicants waiting on results from a background check as that is a statutory licensing requirement for either full licensure or a temporary permit.

COMMENT 15: Multiple commenters recommended the gambling disorder education requirements for current LAC licenses be removed from ARM 24.219.5005 as Montana does not have a gambling disorder crisis, but a substance use crisis and any noncritical license barriers should be eliminated. The commenters stated that this specific continuing education should stay an option under ARM 24.219.5017, for LAC licensees working with gambling disorder patients.

RESPONSE 15: The board disagrees with commenters' position that there is not a gambling disorder crisis. Also, the gambling disorder education requirements are outside the scope of this proposed rulemaking. The board had originally intended to repeal this rule in its entirety as obsolete. However, there are still administratively suspended licensees who could theoretically reactivate their licenses by meeting the gambling requirements. Since this gambling disorder requirement is separate and distinct from the annual continuing education requirements described in ARM 24.219.5017, the board is amending this rule as proposed to retain a clear process

for those administratively suspended licensees to come into compliance until their licenses terminate.

COMMENT 16: Multiple commenters asked the board to reexamine the current gambling disorder contact hours of training requirement in ARM 24.219.5006 and 24.219.5013, asserting the requirement is considered a significant barrier by licensees and potential employers. The commenters recommended several amendments to ensure applicants have a baseline understanding of gambling disorder as a component of the 90 counseling hours in (2)(b)(ii) of these rules.

RESPONSE 16: The board did not propose changes to the gambling disorder education licensure requirements and is unable to accomplish these changes in the final notice. At the time the board implemented the 330-hour requirement, research showed that was the national standard. Depending on licensing trends in this area, the board may be open to stakeholder discussions regarding future rulemaking.

COMMENT 17: Multiple commenters suggested the board strike "...for addiction counselors..." from ARM 24.219.5013(2)(b)(iv) to conform with ARM 24.219.5006(2)(b)(iv).

RESPONSE 17: The board agrees and is amending the rule accordingly.

**Comments 18 through 23 pertain to NEW RULE I:**

COMMENT 18: Multiple commenters recommended the board add "LAC" to the title.

RESPONSE 18: The board agrees and is amending the rule accordingly.

COMMENT 19: A commenter asked whether candidates would still need contracts with their supervisors with the rule changes.

RESPONSE 19: The board does not require supervisor "contracts" in current rules or the proposed amendments. Both the current application process and the process with the proposed changes require candidate applicants and supervisors to attest on the supervision agreement as to their understanding of the board's statutory and rule requirements for candidates and supervisors. If there are changes to supervision, candidates and supervisors must adhere to the notification requirements in NEW RULE II. Any employer-required supervisor "contract" is separate from the board's requirements in ARM Title 24, chapter 219 and beyond the board's authority.

COMMENT 20: One commenter requested confirmation that candidates no longer need to submit supervision logs but that candidates must maintain logs for seven years following licensure in case of an audit.

RESPONSE 20: Yes, NEW RULE I contains the requirements for candidates to maintain logs for seven years from the date of licensure or from the expiration of

their candidate license if they do not get a Montana license. To prove completion of hours for full licensure, candidates and supervisors will continue with the current process of attesting to completion of hours per board requirements. Candidates will only submit logs if they are audited during the period of candidate licensure or if the board requests the records for disciplinary matters. Under NEW RULE I, supervisors must also maintain records.

COMMENT 21: Multiple commenters believed the burden of recordkeeping should remain the responsibility of the candidate due to concerns about the impact on current and potential supervisors. The commenters asserted that NEW RULE I could make it even more difficult for candidates to find supervisors and stated there is already a shortage of supervisors for behavioral health candidates and additional burdens would further negatively impact the situation.

RESPONSE 21: The board disagrees. To carry out its statutory mission of public protection the board concluded it is necessary to ensure that both sides of the supervision record are represented in the records should discrepancies arise. Both the candidate and supervisor are licensees and requiring that both keep records will help ensure that all licensees are adhering to the board's regulations.

COMMENT 22: Multiple commenters were concerned that some agencies hire/employ licensees and require them to supervise one or more candidates as part of the employer/employee relationship. The commenters asked whether the supervisor recordkeeping requirements apply to the licensee as the licensed provider or to the employer agency that financially supports the supervision. The commenters stated the board should amend (5)(c) to clearly describe the required content of the records. Currently, only LCSW supervisors have consistent access to specific and detailed documentation training and potential supervisors who have been in practice for three plus years are not required to undergo supervisor training. This lack of clarity and consistency could imperil the licenses of current and future supervisors and makes NEW RULE I challenging in terms of understanding documentation requirements.

RESPONSE 22: The board does not regulate facilities or businesses, but licenses only LCPC, LCSW, LMFT, candidates, and CBHPSS. The board only has authority over those it regulates so the requirement to maintain records applies to licensed supervisors, candidates, and CBHPSS, not the facility or business. Additionally, not just LCSW have documentation training. CBHPSS have training in documentation as part of the initial licensure training course, and there are multiple training sources available for all license types. The board disagrees with the commenters and believes the requirements in the rule are clear when read with ARM 24.219.301.

COMMENT 23: Multiple commenters agreed that candidates and supervisors should be responsible for recordkeeping but were concerned about them keeping records when they are not required to submit the records with the final application. The commenters understood the burden of recordkeeping on the state and

recommended the board perform regular and extensive audits to ensure that records are being maintained appropriately.

RESPONSE 23: The board notes that NEW RULE I(8) allows the board to set a percentage by motion to conduct annual, random audits of candidates and CBHPSS who have renewed their licenses. Further, under (7) the board may request records from candidates and CBHPSS at any time. Reasons for requesting records could include an investigation related to a complaint.

**Comments 24 and 25 pertain to NEW RULE II:**

COMMENT 24: Multiple commenters were concerned with the proposed requirements for candidates or CBHPSS to notify the board at least ten business days prior to a change in supervisor and for the former supervisor to notify the board of the end of supervision within ten days. The commenters did not understand the intention behind the limited notification period and believed it will create additional administrative burden for the state and providers. The commenters recommended the board amend the rule to require board notification within 20 days of the change.

RESPONSE 24: The board agrees and is amending the rule to require notification no later than 20 business days after the change for all individuals named in the rule.

COMMENT 25: One commenter noted there are situations when a candidate licensee leaves a supervisory relationship with no prior notification which could make it difficult for the supervisor to comply with the new notification requirement in (2)(b).

RESPONSE 25: See RESPONSE 24.

4. The board has amended ARM 24.219.301, 24.219.415, 24.219.421, 24.219.501, 24.219.505, 24.219.512, 24.219.601, 24.219.604, 24.219.605, 24.219.612, 24.219.701, 24.219.704, 24.219.705, 24.219.712, 24.219.907, 24.219.912, 24.219.923, 24.219.5005, 24.219.5006, 24.219.5007, 24.219.5008, and 24.219.5010 exactly as proposed.

5. The board has adopted New Rules III (24.219.502), IV (24.219.608), V (24.219.602), VI (24.219.702), and VII (24.219.5020) exactly as proposed.

6. The board has repealed ARM 24.219.506, 24.219.603, 24.219.703, 24.219.707, 24.219.901, 24.219.902, 24.219.903, 24.219.916, 24.219.5001, 24.219.5003, 24.219.5004, 24.219.5009, 24.219.5011, and 24.219.5014 exactly as proposed.

7. The board has amended ARM 24.219.504 and 24.219.5013 with the following changes, stricken matter interlined, new matter underlined:

24.219.504 LCSW SUPERVISED WORK EXPERIENCE REQUIREMENTS  
(1) remains as proposed.



(2) As a part of the requirements in (1), at least 100 hours must include individual or group supervision by a qualified supervisor under ARM 24.219.421.

(a) through (5) remain as proposed.

(6) A supervisor must have experience and expertise with the candidate's client population (e.g., child, adolescent, adult, chemically dependent/substance use disorder) and methods of practice (i.e., individual, group, family, crisis, or brief interventions).

24.219.5013 LAC CANDIDATE LICENSE REQUIREMENTS

(1) through (2)(b)(iii) remain as proposed.

(iv) minimum of 10 hours in ethics ~~for addiction counselors~~;

(v) through (4) remain as proposed.

8. The board has adopted New Rule I (24.219.422) and New Rule II (24.219.423) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.219.422) GENERAL SUPERVISION AND  
RECORDKEEPING REQUIREMENTS – LCSW, LCPC, LMFT, LAC, AND  
CANDIDATES AND CBHPSS

(1) through (8) remain as proposed.

NEW RULE II (24.219.423) CHANGE OF SUPERVISOR (1) remains as proposed.

(2) When there is a change in supervisor, the following individuals must notify the board no later than 20 business days following the change using forms provided by the department:

(a) the candidate or CBHPSS ~~must notify the board at least ten business days prior to the change~~;

(b) the new supervisor ~~must notify the board at least ten business days prior to the change~~; and/or

(c) the individual ceasing to supervise a candidate ~~or CBHPSS must notify the board of termination of supervision within ten business days following termination of supervision~~.

(3) remains as proposed.

BOARD OF BEHAVIORAL HEALTH  
CATHY JENNI, LCPC, LMFT  
CHAIRPERSON

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

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

Certified to the Secretary of State December 17, 2019.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 32.3.1303 identification,	)	REPEAL
32.4.101 definitions, 32.4.201	)	
identification of alternative livestock,	)	
32.4.203 waivers to identification,	)	
32.4.301 inspection of alternative	)	
livestock, 32.4.401 change of	)	
ownership testing requirements for	)	
alternative livestock, 32.4.403	)	
requirements for alternative livestock	)	
gametes (ova and semen) and	)	
embryos, 32.4.601 importation of	)	
alternative livestock,	)	
32.4.802 quarantine facility,	)	
32.4.1301 definitions, 32.4.1302	)	
requirements for mandatory	)	
surveillance of Montana alternative	)	
livestock farm cervidae for chronic	)	
wasting disease, 32.4.1303	)	
alternative livestock monitored herd	)	
status for chronic wasting disease,	)	
32.4.1309 import requirements for	)	
cervids, 32.4.1311 management of	)	
alternative livestock cervid herds	)	
identified as CWD trace herds,	)	
32.4.1313 management of CWD	)	
positive alternative livestock cervid	)	
herds and the repeal of ARM	)	
32.4.1312 management of alternative	)	
livestock cervid herds with at least	)	
one animal diagnosed with CWD and	)	
with low probability of CWD	)	
transmission	)	

TO: All Concerned Persons

1. On September 20, 2019, the Department of Livestock published MAR Notice No. 32-19-298 regarding the proposed amendment and repeal of the above-stated rules at page 1584 of the 2019 Montana Administrative Register, Issue Number 18.

2. The department has amended ARM 32.3.1303, 32.4.101, 32.4.201, 32.4.203, 32.4.301, 32.4.401, 32.4.403, 32.4.601, 32.4.802, 32.4.1301, 32.4.1302, 32.4.1303, 32.4.1311, and 32.4.1313 as proposed.

3. The department has repealed ARM 32.4.1312 as proposed.

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: Regarding ARM 32.4.301 Inspection of Alternative Livestock and ARM 32.4.1302 Requirements for Mandatory Surveillance of Montana Alternative Livestock Game Cervidae for Chronic Wasting Disease, the department received one comment concerning changes that may decrease the likelihood of confirming a diagnosis or cause of death, and in some cases may hinder the ability to obtain samples for CWD testing.

RESPONSE: The department appreciates this comment but does not agree that extending the timeline allowed for reporting of deaths will decrease the rate of success for determining cause of death or obtaining appropriate samples. Additionally, changes proposed in ARM 32.4.1302 provide the department additional tools to deal with missed or poor-quality samples, such as a requirement to replace samples or a reduction in the herd status of a cervid herd. The department is therefore adopting the changes as proposed.

5. The department is not proceeding with the proposed rule amendment for ARM 32.4.1309 pertaining to the import requirements for cervids. The department received multiple comments on the proposed rule. The comments addressed two specific areas regarding the proposal. These include the potential for the proposed rule to be in violation of the Commerce Clause of the U.S. Constitution and a lack of scientific evidence to support the proposed changes.

The department appreciates all the comments received. The department has taken these comments into consideration and intends to file a replacement notice of proposed rulemaking in order to address these concerns.

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

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

Certified to the Secretary of State December 17, 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 AND  
Rule I and the amendment of ARM     ) AMENDMENT  
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 November 8, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-893 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1957 of the 2019 Montana Administrative Register, Issue Number 21.

2. The department has adopted New Rule I (37.86.3015) as proposed. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

4. The rule adoption and rule amendments are effective January 1, 2020.

/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 December 17, 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 37.70.107, 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 low income energy assistance )  
program (LIEAP) )

TO: All Concerned Persons

1. On November 8, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-897 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1964 of the 2019 Montana Administrative Register, Issue Number 21.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.
4. The department intends to apply these rule amendments retroactively to October 1, 2019. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

/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 December 17, 2019.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 42.15.204, 42.15.216,	)	
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 November 8, 2019, the Department of Revenue published MAR Notice No. 42-1001 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1978 of the 2019 Montana Administrative Register, Issue Number 21.

2. The department has amended ARM 42.15.204, 42.15.216, 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 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 December 17, 2019.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On November 8, 2019, the Department of Revenue published MAR Notice No. 42-1009 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1994 of the 2019 Montana Administrative Register, Issue Number 21.

2. On December 4, 2019, a public hearing was held to consider the proposed amendment. No proponents were present, no proponent oral testimony was received, and the department received no written comments in support. The following person appeared as an interested party to the rulemaking and provided oral and written comments: Cary Hegreberg, Montana Banker's Association (MBA).

3. The department has amended the following rules as proposed: ARM 42.12.501, 42.12.502, 42.12.503, and 42.12.505.

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

42.12.504 DETERMINATION OF SUCCESSFUL COMPETITIVE BIDDER AND SUBMISSION OF COMPLETED APPLICATION (1) through (3) remain as proposed.

(4) The department shall notify the highest bidder in writing. The department shall also notify all other bidders that the highest bidder was notified.

(5) through (10) remain as proposed.

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

5. 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: The MBA requests additional rule amendment requiring the department to notify a bank submitting an irrevocable letter of credit (ILOC) on behalf of an unsuccessful bidder that the bank is officially released from the commitment. MBA stated the regulatory and operational burdens a bank encounters

when keeping these unfunded commitments on its books because the bank must have the capital to support the ILOC for a year, even when it is evident the bidder was unsuccessful. Further, when banks are required to carry these unfunded commitments for extended periods of time, it impacts a bank's ability to provide loans to other creditworthy loan applicants.

RESPONSE 1: The department thanks Mr. Hegreberg and the MBA for its comments. While the department appreciates the issues that financial institutions may encounter when issuing an ILOC for a prospective license bidder, the proposed rule amendments implement 16-4-430, MCA, and the department cannot potentially compromise competitive bid process confidentiality through additional, required correspondence with third parties. However, the department has amended ARM 42.12.504(4) based on these comments to provide that the department will notify all other bidders in addition to the highest bidder. An unsuccessful bidder may then forward that department notice to their financier for the purpose of terminating an ILOC without any undue delay associated with the statutory bid process or without violating bid confidentiality. And if the events described in ARM 42.12.504(10) occur, the next highest bidder and their bank may pursue a replacement ILOC if the original letter of credit was cancelled.

/s/ Todd Olson

Todd Olson  
Rule Reviewer

/s/ Gene Walborn

Gene Walborn  
Director of Revenue

Certified to the Secretary of State December 17, 2019.



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 42.19.401, 42.19.402,	)	REPEAL
42.19.405, and 42.19.407, and the	)	
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 November 8, 2019, the Department of Revenue published MAR Notice No. 42-1010 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 2000 of the 2019 Montana Administrative Register, Issue Number 21.

2. The department has amended ARM 42.19.401, 42.19.402, 42.19.405, and 42.19.407, and repealed ARM 42.19.403 and 42.19.404 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 December 17, 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 July 5, 2019, through December 6, 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.

### ADMINISTRATION, Department of, Title 2

2-4-581	Accounting and Financial Reporting Standards - Report Filing Fees - Filing Penalties - Waivers and Extensions of Penalties - Audit and Audit Reporting Standards - Roster of Independent Auditors - Resolution and Corrections of Audit Findings - Financial Reviews - Incorporation by Reference of Various Standards, Accounting Policies, and Federal Laws and Regulations - Audit Contracts, p. 761, 987, 2217
2-13-585	Public Safety Answering Point (PSAP) Certification and Funding, p. 558, 903, 1368
2-13-592	Applicant Priority and Criteria for Awarding 9-1-1 Grants, p. 1759, 2095
2-13-593	Applicant Priority and Criteria for Awarding 9-1-1 Grants, p. 2075
2-21-584	Voluntary Employees' Beneficiary Association (VEBA), p. 1195, 2011
2-59-586	Government Sponsored Enterprises - Designated Manager Supervisory Requirements - False, Deceptive, or Misleading Advertising - Internet or Electronic Advertising, p. 1917
2-59-587	Semiannual Assessment for Banks, p. 1682, 2228
2-59-590	Renewal Fees for Mortgage Brokers, Lenders, Servicers, and Originators, p. 1545, 2017

(State Lottery and Sports Wagering Commission)

2-63-580 Sports Wagering Accounts - Self-Exclusion - Responsible Gaming - Age Verification - General Provisions - Place of Sale - Licensing - Fees - Electronic Fund Transfers - Accounting - Retailer Commission - Notices - Investigative Cooperation - Prizes - Redemptions to Implement Sports Wagering - Forms of Payment, p. 1685, 2229

AGRICULTURE, Department of, Title 4

4-19-258 Hemp Processing and Associated Fees, p. 698, 1369  
4-19-259 Certified Natural Beef Cattle Marketing Program, p. 702, 1047  
4-19-260 Apiary Fees, p. 782, 1166  
4-19-261 Pesticide Registrations - Worker Protection Standards - Containers and Disposal Program, p. 905, 1523  
4-19-262 Commodity Dealer Licenses, p. 1104  
4-19-263 Pesticide Records and Registrations - Use of 1080 Livestock Protection Collars - M-44 Cyanide Capsules and Devices, p. 1109, 1629

STATE AUDITOR, Office of, Title 6

(Commissioner of Securities and Insurance)

6-256 Annual Audited Reports - Establishing Accounting Practices and Procedures to Be Used in Annual Statements - Internal Audit Function Requirements, p. 1216, 1740  
6-258 Notice of Protection Provided by the Montana Life and Health Insurance Guaranty Association, p. 1224, 1741

(Classification Review Committee)

6-260 Establishment, Deletion, or Revision of Classifications for Various Industries for Supplementing the NCCI Basic Manual for Workers' Compensation and Employers Liability, p. 1548

COMMERCE, Department of, Title 8

8-94-166 Administration of the Delivering Local Assistance (DLA) Program, p. 562, 955  
8-94-171 Administration of the 2021 Biennium Federal Community Development Block Grant (CDBG) Program—Planning Grants, p. 1120, 1630  
8-94-172 Deadline for the Second Cycle for the Community Development Block Grant (CDBG)—Planning Grants, p. 1705, 2096  
8-94-175 Administration of the Montana Historic Preservation Grant (MHPG) Program, p. 1926  
8-94-176 Administration of the 2021 and 2023 Biennia Treasure State Endowment Program, p. 2182  
8-99-167 Certified Regional Development Corporation Program, p. 785, 1168

- 8-99-168 Implementation of the Big Sky Economic Development Trust Program, p. 788, 1169
- 8-100-169 Montana Board of Research and Commercialization Technology, p. 915, 1370
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Agents Protocols - Adrenocortico-Steroid Agent Protocols - Protocol for Use of an Approved Medication as a Neuropathic Pain Agent - Temporary Practice Permit - Inactive Status - Continuing Education - Continuing Education–Exemption - Unprofessional Conduct - Bactericidal Agents Protocols - Applications for Licensure - Pass-Fail Criteria - Supervision–Methods - Documentation of Instruction and Training - Approval to Use Sound and Electrical Physical Agent Modalities Endorsement - Documenting Education and Competence to Perform Sound and Electrical Physical Agent Modalities–Out-of-State Practitioners, p. 509, 1743

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## EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in November 2019 appear. Potential vacancies from January 1, 2020 through March 31, 2020, are also listed.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 1, 2019.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

**EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Barbers and Cosmetologists</b>			
Mrs. Barbara Jenkins Kalispell Qualifications (if required): Barber	Governor	Ludtke-Heagle	11/6/2019 10/1/2023
Mr. Bryan Kirkland Bozeman Qualifications (if required): Barber	Governor	Orton	11/6/2019 10/1/2022
<b>Board of Psychologists</b>			
Dr. Christine Fiore Missoula Qualifications (if required): Licensed Psychologist	Governor	Silverman	11/6/2019 9/1/2024
Dr. James P. Murphey Bozeman Qualifications (if required): Licensed Psychologist	Governor	Reappointed	11/6/2019 9/1/2024
<b>Board of Respiratory Care Practitioners</b>			
Mr. William Glenn Carmichael Great Falls Qualifications (if required): Respiratory Care Practitioner	Governor	Reappointed	11/6/2019 1/1/2023



**EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Respiratory Care Practitioners Cont.</b>			
Mr. Justin Lyle O'Brien	Governor	Reappointed	11/6/2019
Libby			1/1/2023
Qualifications (if required): Member of the public who is not a member of a health care profession			
<b>Ground Water Assessment Steering Committee</b>			
Ms. Jane Holzer	Governor	Reappointed	11/21/2019
Conrad			7/1/2021
Qualifications (if required): Representative of conservation			
Mr. Mark S. Thompson	Governor	Reappointed	11/21/2019
Butte			7/1/2023
Qualifications (if required): Representative of industrial water users			
<b>Historical Records Advisory Council</b>			
Ms. Jodie Foley	Governor	Reappointed	11/21/2019
Helena			10/1/2021
Qualifications (if required): State Archivist			
Ms. Anne L. Foster	Governor	Reappointed	11/21/2019
Gardiner			10/1/2021
Qualifications (if required): Public Archives			

**EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Historical Records Advisory Council Cont.</b>			
Ms. Heather C. Hultman Bozeman	Governor	Reappointed	11/21/2019 10/1/2021
Qualifications (if required): Research Institution			
Ms. Aubrey Japp Butte	Governor	Reappointed	11/21/2019 10/1/2021
Qualifications (if required): Public Archives			
Ms. Kathryn Marie Kramer Great Falls	Governor	Reappointed	11/21/2019 10/1/2021
Qualifications (if required): Private Archives			
Ms. Kathleen D. Mumme Sheridan	Governor	Reappointed	11/21/2019 10/1/2021
Qualifications (if required): Private Archives			
Ms. Eileen A. Wright Billings	Governor	Reappointed	11/21/2019 10/1/2021
Qualifications (if required): Research Institution			

**EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Interstate Medical Licensure Compact Commission</b>			
Dr. James N. Burkholder	Governor	Marquand	11/21/2019
Helena			7/1/2021
Qualifications (if required): Physician Member			
<b>State Banking Board</b>			
Ms. Jennifer L. McGinnis	Governor	Rapp	11/21/2019
Polson			7/1/2022
Qualifications (if required): Member of the public			
<b>State Emergency Response Commission</b>			
Ms. Chelsi Bay	Governor	Fjeseth	11/21/2019
Helena			10/1/2023
Qualifications (if required): Representative of the Department of Agriculture			
<b>Statewide Independent Living Council</b>			
Ms. Lisa L. Allensworth	Governor	Smith	11/21/2019
St. Marie			12/1/2021
Qualifications (if required): Representing a person with a disability			
Ms. June Guenzler Hermanson	Governor	Casbeer	11/21/2019
Helena			12/1/2021
Qualifications (if required): Person with a disability			

**EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Statewide Independent Living Council Cont.</b>			
Ms. Deserie Bonnie Kelly Missoula	Governor	Ramalho	11/21/2019 12/1/2020
Qualifications (if required): Person with a disability			
Mr. Brent Allen Morris Billings	Governor	Hughes	11/21/2019 12/1/2021
Qualifications (if required): Person with a disability			
Mr. Thomas Henry Thompson Missoula	Governor	McCabe	11/21/2019 12/1/2021
Qualifications (if required): Person with a disability			
<b>Water Pollution Control Advisory Council</b>			
Mr. Eric Campbell Bozeman	Governor	Leu	11/6/2019 1/1/2021
Qualifications (if required): Representative of industry concerned with the disposal of organic waste			
<b>Youth Justice Council</b>			
Ms. Rhonda Schaffer Helena	Governor	None Stated	11/6/2019 3/1/2020
Qualifications (if required): Public Agency concerned with Delinquency Prevention			

**EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2020 THROUGH MARCH 31, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Board of Chiropractors</b>		
Dr. Amy Pezo, Helena	Governor	1/1/2020
Qualifications (if required): Chiropractor		
<b>Board of Personnel Appeals</b>		
Ms. Anne L. MacIntyre, Helena	Governor	1/1/2020
Qualifications (if required): Attorney with General Labor-Management experience		
<b>Board of Public Education</b>		
Mr. Paul Andersen, Bozeman	Governor	2/1/2020
Qualifications (if required): District 1		
Mr. Scott M. Stearns, Missoula	Governor	2/1/2020
Qualifications (if required): District 1, Democrat		
<b>Board of Regents</b>		
Mr. Paul Tuss, Havre	Governor	2/1/2020
Qualifications (if required): District 2 Representative		
<b>Grass Conservation Commission</b>		
Mr. Jeffrey Allen Willmore, Roy	Governor	1/1/2020
Qualifications (if required): Holds an active grazing preference rights within a state district		
Mr. Gregory Martin Oxarart, Malta	Governor	1/1/2020
Qualifications (if required): Officer of or serves on the board of directors of a state district		

**EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2020 THROUGH MARCH 31, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Judicial Nomination Commission</b>		
Ms. Janice Bishop, Missoula	Governor	1/1/2020
Qualifications (if required): Lay member who is neither a judge nor an attorney active or retired		
<b>Montana Arts Council</b>		
Mr. Sean Chandler, Harlem	Governor	2/1/2020
Qualifications (if required): Public Representative		
Mr. Rob Quist, Kalispell	Governor	2/1/2020
Qualifications (if required): Public Representative		
Ms. Youpa Stein, Arlee	Governor	2/1/2020
Qualifications (if required): Public Representative		
Mr. Mark Kuipers, Missoula	Governor	2/1/2020
Qualifications (if required): Public Representative		
Ms. Jean Steele, Hamilton	Governor	2/1/2020
Qualifications (if required): Public Representative		
Ms. Lynne Montague, Billings	Governor	2/1/2020
Qualifications (if required): Public Representative		
<b>Montana Small Business Development Center Advisory Council</b>		
Mr. Matt Harrington, Browning	Governor	2/1/2020
Qualifications (if required): Economic Developer		

**EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2020 THROUGH MARCH 31, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Montana Small Business Development Center Advisory Council Cont.</b>		
Mr. Paddy Fleming, Bozeman Qualifications (if required): Economic Developer	Governor	2/1/2020
Mr. Joseph Willauer, Butte Qualifications (if required): Economic Developer	Governor	2/1/2020
Mr. Reed W. Bassett, Great Falls Qualifications (if required): Small Business Lender	Governor	2/1/2020
Mr. Chris Davis, Helena Qualifications (if required): Small Business Owner	Governor	2/1/2020
Mr. Karl Drga, Miles City Qualifications (if required): Small Business Lender	Governor	2/1/2020
Mr. Joe Fanguy, Missoula Qualifications (if required): Economic Developer	Governor	2/1/2020
Ms. Debbie Singer, Billings Qualifications (if required): Economic Developer	Governor	2/1/2020
<b>Potato Commodity Advisory Committee</b>		
Mr. Dave Cottom, Dillon Qualifications (if required): Potato Producer	Governor	3/1/2020

**EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2020 THROUGH MARCH 31, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Potato Commodity Advisory Committee Cont.</b>		
Mr. William Buyan Jr., Sheridan Qualifications (if required): Potato Producer	Governor	3/1/2020
Mr. Tim Vanhuizen, Manhattan Qualifications (if required): None Stated	Governor	3/1/2020
Mr. William F. Buyan Jr., Sheridan Qualifications (if required): Potato Producer	Governor	3/1/2020
Mr. Tim Venhuizen, Manhattan Qualifications (if required): Potato Producer	Governor	3/1/2020
Mr. Glenn McFarlane, Billings Qualifications (if required): Potato Producer	Governor	3/1/2020
<b>Pulse Crop Commodity Advisory Committee</b>		
Mr. Paul Kanning, Flaxville Qualifications (if required): Producer	Governor	2/1/2020
Ms. Jullien Street, Chester Qualifications (if required): Producer	Governor	2/1/2020



**EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2020 THROUGH MARCH 31, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Resource Conservation Advisory Council</b>		
Mr. Doug Bonsell, Ekalaka	Governor	1/1/2020
Qualifications (if required): Eastern Montana		
<b>State Apprenticeship Advisory Council</b>		
Mr. Dean Bentley, Butte	Governor	3/1/2020
Qualifications (if required): Chair SWIB Member		
Mr. Barry Reddick, Helena	Governor	3/1/2020
Qualifications (if required): Non-Union Member		
Mr. Clint Reading, Missoula	Governor	3/1/2020
Qualifications (if required): Public Member		
Mr. Dale Carpenter, Butte	Governor	3/1/2020
Qualifications (if required): Union Member		
Mr. Tim Newman, Midvale, UT	Governor	3/1/2020
Qualifications (if required): Union Member		
Mr. Quinton Queer, Butte	Governor	3/1/2020
Qualifications (if required): Union Member		
Mr. Jeff Stark, Billings	Governor	3/1/2020
Qualifications (if required): Union Member		

**EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2020 THROUGH MARCH 31, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Apprenticeship Advisory Council Cont.</b>		
Mr. Mike Waldenberg, Great Falls Qualifications (if required): Non-Union Member	Governor	3/1/2020
Ms. Bekhi Spika, Lewistown Qualifications (if required): Non-Union Member	Governor	3/1/2020
Mr. Chris Hopkins, Miles City Qualifications (if required): Non-Union Member	Governor	3/1/2020
Ms. Nikki Dixon-Foley, Bozeman Qualifications (if required): Non-Union Member	Governor	3/1/2020
Ms. Margaret McManus, Missoula Qualifications (if required): Non-Union Member	Governor	3/1/2020
Mr. Brock Tessman, Helena Qualifications (if required): Public Member	Governor	3/1/2020
<b>Traumatic Brain Injury Advisory Council</b>		
Dr. Ruth Elizabeth Ross, Missoula Qualifications (if required): Member of the public	Governor	1/1/2020
Ms. Joanna Susanne Reed, Helena Qualifications (if required): Representative of injury control or prevention programs	Governor	1/1/2020

**EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2020 THROUGH MARCH 31, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Traumatic Brain Injury Advisory Council Cont.</b>		
Ms. Ann Geiger, Whitehall	Governor	1/1/2020
Qualifications (if required): Advocate for Brain-Injured Persons		
Ms. April Haugrose, Great Falls	Governor	1/1/2020
Qualifications (if required): Representative of injury control or prevention programs		
Ms. Angela K. Grant, Arlee	Governor	1/1/2020
Qualifications (if required): Representative of injury control or prevention programs		
<b>Youth Justice Council</b>		
Sheriff Craig Anderson, Glendive	Governor	3/1/2020
Qualifications (if required): Experience, competence in addressing problems related to school violence, vandalism		
Commissioner Laura Obert, Townsend	Governor	3/1/2020
Qualifications (if required): Local Government and Board of Crime Control Member		
Mr. Randy Shipman, Dillon	Governor	3/1/2020
Qualifications (if required): Public Agency concerned with delinquency prevention or treatment		
Mr. Dave Bailon, Kalispell	Governor	3/1/2020
Qualifications (if required): Volunteer who works with delinquents or potential delinquents		
Ms. Geri Small, Lame Deer	Governor	3/1/2020
Qualifications (if required): Experience and competence in addressing problems related to disabilities		

**EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2020 THROUGH MARCH 31, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Youth Justice Council Cont.</b>		
Mr. Tim Brurud, Havre Qualifications (if required): Chair Non-profit	Governor	3/1/2020
Ms. Rachel Marie Gemar, Bozeman Qualifications (if required): Under the age of 24	Governor	3/1/2020
Honorable Mary Jane McCalla Knisely, Billings Qualifications (if required): Law enforcement and juvenile justice agencies	Governor	3/1/2020
Mr. Peter Brooks McIntosh, Helena Qualifications (if required): Under the age of 24	Governor	3/1/2020
Ms. RaeGyn Trombley, Great Falls Qualifications (if required): Under the age of 24	Governor	3/1/2020
Mr. Qasim Walid Abdul-Baki, Missoula Qualifications (if required): Experience and competence in addressing problems related to school violence	Governor	3/1/2020
Ms. Minnetta Armstrong, Browning Qualifications (if required): Public agency concerned with delinquency prevention	Governor	3/1/2020
Mrs. Laurie Nelson Barron, Whitefish Qualifications (if required): Person with competence in problems with school violence	Governor	3/1/2020
Ms. Heather Cahoon, Missoula Qualifications (if required): Non-profit with special focus on preserving, strengthening families	Governor	3/1/2020

**EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2020 THROUGH MARCH 31, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Youth Justice Council Cont.</b>		
Ms. Kimberly Michelle Leighton, Helena Qualifications (if required): Non-profit with special focus on preserving families	Governor	3/1/2020
Ms. Jazmyn Saunders, Missoula Qualifications (if required): Under the age of 24	Governor	3/1/2020
Mr. Chase Comes At Night, Billings Qualifications (if required): Under the age of 24	Governor	3/1/2020
Ms. Rhonda Schaffer, Helena Qualifications (if required): Public Agency concerned with Delinquency Prevention	Governor	3/1/2020

MONTANA ADMINISTRATIVE  
REGISTER

2019 ISSUE NO. 24  
DECEMBER 27, 2019  
PAGES 2274-2415

**COREY STAPLETON**  
SECRETARY OF STATE

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