

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I, II, III, IV, and V and)	PROPOSED ADOPTION AND
amendment of ARM 4.16.104)	AMENDMENT
pertaining to the Student Loan)	
Assistance Program)	

TO: All Concerned Persons

1. On February 21, 2020, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at 302 N. Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on February 17, 2020, to advise us of the nature of the accommodation that you need. Please contact Zach Coccoli, Department of Agriculture, 302 N. Roberts, Helena, Montana, 59601; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov.

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

NEW RULE I OBJECTIVES (1) The primary objectives of the Student Loan Assistance Program are to:

- (a) encourage Montana's college-educated youth to pursue a primary career in farming or ranching;
- (b) reduce financial stress on Montana's farm and ranch operators; and
- (c) promote succession planning to preserve interest in Montana's agricultural future.

AUTH: 90-9-203, 90-9-501, MCA

IMP: 90-9-501, 90-9-505, MCA

REASON: House Bill 431 signed by Governor Bullock on May 20, 2019 establishes the Montana Farmer Loan Repayment Assistance Program. Section 90-9-501, MCA requires the program provide for the direct repayment of educational loans of eligible farmers in accordance with the rules adopted by the council pursuant to 90-9-203, MCA.

NEW RULE II APPLICATION PROCEDURES FOR LOAN REPAYMENT ASSISTANCE PROGRAM (1) Application forms for farmer loan repayment assistance will be published annually on the department's website.

(2) Applicants must provide all requested information and meet eligibility and documentation requirements specified in ARM 4.16.103 to be considered eligible for funding.

AUTH: 90-9-203, 90-9-501, MCA
IMP: 90-9-502, 90-9-504, MCA

REASON: House Bill 431 signed by Governor Bullock on May 20, 2019 establishes the Montana Farmer Loan Repayment Assistance Program. Sections 90-9-502 and 90-9-504, MCA establish eligibility requirements and conditions that must be monitored by the department and necessary documentation to verify the applicant's eligibility.

NEW RULE III ELIGIBILITY AND DOCUMENTATION REQUIREMENTS

(1) The Agriculture Development Council will direct the department to conduct a review of eligibility prior to making funding decisions.

(2) Applicants must provide sufficient documentation to establish:

(a) proof of residency;
(b) completion of associate or baccalaureate degree from postsecondary institution as defined in 20-26-603, MCA;

(c) primary ownership, including an heir, successor, or assignee of an agricultural operation;

(d) participation in the day-to-day operations of a farm or ranch; and

(e) commitment to operate the farm or ranch for at least five years following application.

(3) Applicants must provide documentation of requested educational loan information including but not limited to total outstanding loan amount, loan servicer information, payment schedule, history, and interest rate.

AUTH: 90-9-203, 90-9-501, MCA
IMP: 90-9-502, 90-9-504, MCA

REASON: House Bill 431 signed by Governor Bullock on May 20, 2019 establishes the Montana Farmer Loan Repayment Assistance Program. Sections 90-9-502 and 90-9-504, MCA establish eligibility requirements and conditions that must be monitored by the department and requires necessary documentation to verify the applicant's eligibility.

NEW RULE IV ANNUAL MONITORING AND DISBURSEMENTS (1) The department will conduct annual monitoring activities for ongoing eligibility verification and program compliance.

(2) Annual monitoring activities will be documented on reports established by department staff and stored at the department for the duration of the loan assistance plus five years.

(3) Disbursements may be made by the department directly to the educational loan servicer or provided to the recipient on a reimbursement basis

provided verified loan statements indicating full and timely payments are made available to the department.

AUTH: 90-9-203, 90-9-501, MCA

IMP: 90-9-502, 90-9-503, 90-9-504, MCA

REASON: House Bill 431 signed by Governor Bullock on May 20, 2019 establishes the Montana Farmer Loan Repayment Assistance Program. Section 90-9-502, MCA establishes eligibility requirements and conditions that must be monitored by the department. Sections 90-9-503 and 90-9-504, MCA require the council establish procedures to safeguard against misuse of funds and ensure payments to the farmer are received by the educational loan servicer.

NEW RULE V REPAYMENT (1) Funding recipients who cease to operate the farm or ranch before the end of the five-year commitment period must repay the total amount of assistance received to date.

(2) Funding recipients who fail to complete required monitoring reports or abide by written agreement must repay the total amount of assistance received since the date of the last verified report or date of breach.

AUTH: 90-9-203, 90-9-501, MCA

IMP: 90-9-502, 90-9-504, MCA

REASON: House Bill 431 signed by Governor Bullock on May 20, 2019 establishes the Montana Farmer Loan Repayment Assistance Program. Section 90-9-502, MCA establishes eligibility requirements and conditions that must be monitored by the department including provisions for repayment. Section 90-9-504, MCA requires documentation necessary to verify the applicant's eligibility throughout the duration of the assistance.

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

4.16.104 COUNCIL REVIEW PROCESS PRIOR TO LOAN OR GRANT

(1) Prior to making an initial loan or grant determination, the council ~~shall~~ must:

(a) direct the department to ensure applications are completed as required by ARM 4.16.503 or [New Rule III];

(b) review all complete applications and the accompanying materials required by ARM 4.16.503 or [New Rule III];

(c) determine whether each proposed project meets the requirements of 90-9-308, ~~and 90-9-311, and 90-9-502, MCA;~~

(d) consider information provided by the applicant to the council at a meeting designated for such purpose;

(e) determine whether grant applicants meet the requirements of 90-9-310 and 90-9-504, MCA; and

(f) rank the projects according to the information reviewed.

- (2) After the council has reviewed and ranked the projects, it shall make funding decisions based on eligibility, funds availability, and project rankings.
- (3) The council may provide preference to projects within targeted areas.

AUTH: 90-9-202, 90-9-203, 90-9-501, MCA
IMP: 90-9-102, 90-9-202, MCA

REASON: House Bill 431 signed by Governor Bullock on May 20, 2019 establishes the Montana Farmer Loan Repayment Assistance Program and amended 90-9-102 and 90-9-202, MCA to assign responsibility for oversight and implementation to the Agriculture Development Council.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Zach Coccoli, Department of Agriculture, 302 N. Roberts, Montana, 59601; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., March 2, 2020.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on January 21, 2020.

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

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State January 21, 2020.

BEFORE THE MONTANA COAL BOARD
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PROPOSED
Rule I pertaining to the procedural) ADOPTION
rules of the Coal Board)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On March 3, 2020, the Coal Board proposes to adopt the above-stated rule.

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., February 18, 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 200523, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov.

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

NEW RULE I PUBLIC PARTICIPATION (1) The Coal Board adopts and incorporates by reference ARM 8.2.201 through 8.2.206 which sets forth the Department of Commerce's public participation rules. A copy of the rules may be obtained from the Coal Board, Department of Commerce, 301 South Park, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

REASON: The Coal Board proposes to adopt this rule to ensure its compliance with 2-3-103, MCA.

4. Concerned persons may submit their data, views, or arguments in written form or as a request for opportunity to submit data, views, or arguments in oral form to: Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523; telephone (406) 841-2596; TDD (406) 841-2731; facsimile (406) 841-2771 or e-mail to docadministrativerules@mt.gov, and must be received no later than 5:00 p.m., February 28, 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 at the above address no later than 5:00 p.m., February 28, 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 25 based upon the number of individuals interested in rulemaking by the department.

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 adoption of the above-referenced rule 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 January 21, 2020.

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

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULES I, II, III, and IV pertaining to) PROPOSED ADOPTION
Public Access Land Agreements)

TO: All Concerned Persons

1. On February 25, 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 adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than February 14, 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.

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

NEW RULE I DEFINITIONS (1) "Inaccessible public land" means public land wholly surrounded by private land by which there is no other legal access via public road, trail, right of way or easement; public waters; adjacent federal, state, county, or municipal land that is open to public use; or adjacent private land for which that landowner has not granted permission to cross.

(2) "Landowner" means an individual, association, organization, or business entity, that owns land in fee, or a tenant or contract for deed purchaser with written authority to enter a PALA and receive payments.

(3) "PALA" means public access land agreement. A PALA is an agreement between a private landowner and the department pursuant to 87-1-295, MCA, whereby the public is allowed access across private lands to inaccessible public lands or under accessible public lands.

(4) "PL/PW" means private land/public wildlife advisory committee provided for in 87-1-269, MCA.

(5) "Public land that is leased by the landowner" means "Inaccessible public land" or "under accessible public land" for which a landowner has an agreement with a government agency authorizing the landowner to use the whole or part of the inaccessible public land for grazing or farming.

(6) "Under accessible public land" means public land wholly surrounded by private land by which there is no other legal access point within two miles via public road, trail, right of way or easement; public waters; adjacent federal, state, county, or municipal land that is open to public use.

AUTH: 87-1-297, MCA
IMP: 87-1-295, 87-1-296, MCA

NEW RULE II APPLICATION FOR PUBLIC ACCESS LAND AGREEMENT

- (1) The PALA application must include the following information:
 - (a) legal or detailed land description of public land to which access is being proposed;
 - (b) description of the proposed road, travel route, or connecting private lands legal land description through which access is being proposed;
 - (c) map depicting public land to be accessed, and public access route across private land;
 - (d) transportation mode by which public access is to be allowed;
 - (e) indication as to whether the public land to be accessed is public land that is leased by the landowner; and
 - (f) improvements to the land provided by the department to facilitate public access.
- (2) If the property through which access is provided is owned in common by multiple owners, the PALA application must specify the share of the payment to which each owner is entitled, and each owner or agent of the owner must sign the application.
- (3) The department shall develop and maintain a PALA application form.
- (4) Failure to include any required information may result in denial of the application.

AUTH: 87-1-297, MCA
IMP: 87-1-295, 87-1-296, MCA

NEW RULE III PUBLIC ACCESS LAND AGREEMENTS

- (1) Before approving a PALA the department must exercise reasonable diligence to verify that:
 - (a) the public lands are not restricted or closed to general recreational use by the land management agency that owns or has legal control of the public land;
 - (b) the private lands are wholly owned by the applicant(s) and there is open access across the designated access route;
 - (c) access routes restricted to foot travel only:
 - (i) must be capable of accommodating normal ambulatory travel; and
 - (ii) must not exceed one linear mile from the beginning to the end of the access route; and
 - (d) access routes available to vehicles must be capable of accommodating typical road use vehicles under normal conditions.
- (2) If access to inaccessible public land or under accessible public land can only or most effectively be provided through separate properties owned by different landowners, an agreement may be issued with each landowner provided each landowner holds the lease or permit on the public land or the public land does not have an existing lease or permit.
- (3) Contingent on the annual availability of funds to operate the PALA program, landowners may elect to participate in a PALA for up to 10 years with the agreement being renewed annually.

(4) Applications must be received at least 6 weeks prior to the next upcoming PL/PW meeting to allow for time for adequate department and PL/PW review.

(5) A PALA shall not be construed to support, establish or preclude, limit or diminish any claim for the right to public use.

(6) Priority consideration for PALA enrollment will be given for lands that are open during commission-established hunting and fishing seasons.

(7) A PALA may be terminated by the department or the landowner if the terms of the agreement are violated. An agreement may be canceled, and a landowner's property withdrawn from the program at any time due to circumstances beyond the control of the landowner or the department, such as death, illness, natural disaster, or acts of nature. In the event of termination, payment will be reduced and correlated to the time frame and access provided.

(8) The landowner and the department may deny access to an individual(s) for violation of PALA rules.

(9) A PALA does not convey to the public any right to hunt or otherwise recreate on the private land through which they can travel to reach public land.

(10) The department shall maintain and make available to the public a list of current PALA locations and rules.

(11) With department approval, a landowner may impose reasonable limitations through temporary closure of a PALA to address concerns related to high fire danger, weather-related impact to travel route, safety, or agricultural production activities such as livestock handling or harvest and planting of crops, so long as:

(a) the landowner notifies department regional headquarters at least 24 hours prior to the closure;

(b) the landowner posts notice to the public on-site; and

(c) the closure is removed within 24 hours after the conditions causing the closure no longer to exist.

AUTH: 87-1-297, MCA

IMP: 87-1-295, 87-1-296, MCA

NEW RULE IV LANDOWNER COMPENSATION (1) In negotiating for the annual payment to a landowner, the department shall consider:

(a) acres of private land over which access is provided;

(b) acres of public land accessed;

(c) duration public access is allowed;

(d) mode of transportation allowed; and

(e) other uses allowed.

(2) Higher compensation will be provided to landowners who allow access during commission-established hunting and fishing seasons.

(3) Landowners in the program may receive:

(a) monetary compensation not to exceed \$15,000 per annual agreement; and

(b) improvements provided by the department to the private land that facilitate public access.

AUTH: 87-1-297, MCA

IMP: 87-1-295, 87-1-296, MCA

REASON: The 2019 Legislature passed SB 341, codified in 87-1-295, 87-1-296, and 87-1-297, MCA, which allows the issuance of public access land agreements. The program is a voluntary, incentive-based program which allows the department to enter into an agreement with a landowner in order to provide access across the landowner's private land to public land. The department is proposing to adopt rules that are necessary to implement the program. The proposed rules include the application requirements, terms of the agreement should it be issued, and clarification on landowner compensation.

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: Jason Kool, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail Jason.Kool@mt.gov, and must be received by February 28, 2020.

5. Kaedy Gangstad or another person appointed by the department has been designated to preside over and conduct this 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, apply and have been fulfilled. The primary bill sponsor was contacted by telephone on January 2, 2020, by electronic mail on January 3, 2020, and a letter was sent by U.S. postal mail on January 7, 2020.

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

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

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

Certified to the Secretary of State January 21, 2020.

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 12.11.301 pertaining to) PROPOSED AMENDMENT
personal flotation devices)

TO: All Concerned Persons

1. On February 24, 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 February 14, 2020, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

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

12.11.301 PERSONAL FLOTATION DEVICES AND LIFE PRESERVERS

~~(1) The following are requirements for personal flotation devices and life preservers upon motorboats and vessels launched upon the waters of this state:~~

~~(a) all recreational boats, and canoes and kayaks of any length must have one type I, II, or III device (of a suitable size) aboard for each person;~~

~~(b) a type V device may be substituted for types I, II, III when properly worn on the person at all times while the vessel is in operation;~~

(1) Wearable U.S. Coast Guard approved personal flotation devices must be readily accessible to all persons on the vessel.

~~(c) (2) All recreational boats vessels 16 feet in length and over, in addition to the above, must have one U.S. Coast Guard approved throwable type IV device~~
personal flotation device (seat cushion with handles or ring buoy); that is immediately available for use.

(3) Personal flotation devices are required to be securely worn when operating a sailboard if:

(a) the person operating the sailboard is 14 years of age or younger; or

(b) two or more people are occupying the sailboard.

~~(d) type I, II, and III devices shall be readily accessible to all persons on board; the type IV device shall be immediately available for use.~~

~~(2) The following are requirements for sailboards used on waters of this state:~~

~~(a) if two or more persons are occupying a sailboard, each occupant must have a coast guard approved life preserver securely fastened to his person;~~

~~(b) a person operating a sailboard (windsurfer), who has not reached his 15th birthday, must have a coast guard approved life preserver securely fastened to his person.~~

~~(3) The amendment to (1)(a) of this rule, requiring all boats to carry personal flotation devices, is effective May 1, 1996.~~

AUTH: 23-2-521, ~~87-1-301, 87-1-303~~, MCA

IMP: 23-2-521, MCA

REASON: The department is proposing amendments to ARM 12.11.301 to remove language that is statute and clarify language within the rule including incorporating the U.S. Coast Guard's new labeling standards for personal flotation devices. The U.S. Coast Guard is transitioning from labeling personal floatation devices as "types" and instead will be using icons to indicate the level of buoyancy and activity use. The proposed amendments will permit recreationists to use any U.S. Coast Guard approved personal floatation device regardless of the label if it is still in working condition.

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: Phil Kilbreath, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail pkilbreath@mt.gov, and must be received by February 28, 2020.

5. Jessica Snyder or another person appointed by the department has been designated to preside over and conduct this 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/ Zach Zipfel
Zach Zipfel
Rule Reviewer

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

Certified to the Secretary of State January 21, 2020.

BEFORE THE GOVERNOR'S OFFICE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM)	NOTICE OF PUBLIC HEARING
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energy supply emergency rules)	

TO: All Concerned Persons

1. On February 24, 2020, at 10:00 a.m., the Department of Environmental Quality, acting on behalf of the Governor's Office, will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed repeal and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., February 17, 2020, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

3. The Governor is proposing to repeal many of the substantive rules in ARM Title 14, chapter 8, subchapters 1 through 3 for the reasons set forth below for the repeal of those rules. All remaining substantive requirements concerning energy emergencies or energy supply alerts are proposed to be repealed and adopted as new rules in new subchapter 4. This would allow one rule to address requirements for distributors of petroleum, natural gas, or electricity, and avoid repetition of similar requirements for each type of energy. It would also make the rules easier to read and understand.

4. The rules proposed for repeal are as follows:

14.8.101 PURPOSE

AUTH: 90-4-316, MCA
IMP: 90-4-316, MCA

REASON: This rule, concerning the purpose of the subchapter, is unnecessary because there is no reason to have a rule on the purpose of a subchapter for which all substantive rules are being proposed to be repealed. In addition, rules describing the purpose of a subchapter are not favored because the effect of a rule should be clear from its text and a purpose rule might conflict with the text of a rule in the subchapter. Therefore, this rule should be repealed.

14.8.102 DEFINITIONS

AUTH: 90-4-316, MCA
IMP: 90-4-316, MCA

REASON: This rule, containing definitions for ARM Title 14, chapter 8, subchapter 1, which concerns petroleum fuel shortages, is unnecessary and should be repealed. New Rule I would contain definitions for the new energy supply alert and energy emergency rules. Many of the terms defined in ARM 14.8.102 are not being used, so definitions for those unused terms will not be included in New Rule I.

14.8.103 NOTIFICATION OF THE EXISTENCE OF AN ENERGY SUPPLY ALERT OR ENERGY EMERGENCY

AUTH: 90-4-316, MCA
IMP: 90-4-309, MCA

REASON: This rule is being proposed to be repealed and its requirements, concerning notification by the Governor of a declaration of a supply alert or emergency, are being proposed to be rewritten and adopted in New Rule II. The first sentence, concerning declaration of a supply alert or emergency, is unnecessary because 90-4-309 and 90-4-310, MCA, authorize the Governor to declare a supply alert or emergency. This provision is therefore not being included in New Rule II.

14.8.104 ENERGY SUPPLY ALERT PROCEDURES - MOTOR GASOLINE

AUTH: 90-4-316, MCA
IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.104, which concerns supply alerts for motor gasoline, because it is unnecessary. The only rules to which it refers, ARM 14.8.105 and 14.8.106, are being proposed for repeal. The

reasons for the proposed repeal of those rules are set out below. Therefore, ARM 14.8.104 should be repealed.

14.8.105 PUBLIC SECTOR SUPPLY ALERT PROCEDURES - MOTOR GASOLINE

AUTH: 90-4-316, MCA
IMP: 90-4-309, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.105, which concerns public sector supply alert procedures for motor gasoline, because the Governor has authority in 90-4-309, MCA, to require state agencies and political subdivisions to reduce energy usage and promote conservation, waste prevention, and salvage of energy related resources. This administrative rule is not necessary to implement that authority and so is proposed to be repealed.

14.8.106 PRIVATE SECTOR SUPPLY ALERT PROCEDURES - MOTOR GASOLINE

AUTH: 90-4-316, MCA
IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.106 because it is unnecessary. It refers to non-binding requests concerning energy conservation that the Governor may make to the public or certain businesses and the Governor already has the inherent authority to make non-binding requests.

14.8.107 ENERGY SUPPLY ALERT PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA
IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.107 because the only rules to which it refers, ARM 14.8.108 and 14.8.109, are being proposed for repeal.

14.8.108 PUBLIC SECTOR SUPPLY ALERT PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA
IMP: 90-4-309, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.108 because it is unnecessary. The Governor has authority under 90-4-309, MCA, in an energy supply alert, to require state agencies and political subdivisions to reduce energy usage and promote conservation, waste prevention, and salvage of energy related

resources. Because (1) and (2) concern those matters, they are redundant and it is appropriate to repeal them.

Section (3) gives the Governor authority to require a state agency that no longer exists, the Department of Health and Environmental Sciences, to examine and make recommendations concerning air quality restrictions affecting middle distillate usage or available substitutes. The Department of Environmental Quality is the agency now charged with regulating air quality, including applicable air quality aspects of middle distillate use. The Governor has inherent authority to require executive branch state agencies such as the Department of Environmental Quality to examine air quality restrictions affecting middle distillate use and to make recommendations about such restrictions to the Governor. State agencies must carry out such energy supply alert measures as ordered by the Governor. 90-4-311, MCA. An order to examine restrictions relating to air quality concerning middle distillate use and make recommendations regarding them would be covered under that statute. Therefore, (3) is not necessary and should be repealed.

Section (4) requires the Public Service Commission (PSC) to examine restrictions relating to fuel hauling and make recommendations to the Governor. Fuel hauling is subject to safety regulation by the Montana Department of Transportation (MDT). See 61-10-154, MCA, and implementing rules at ARM Title 18, chapter 8. However, a motor carrier may not operate, which includes hauling fuel, without a certificate of public convenience and necessity from the PSC. 69-12-311, MCA. The Governor already has inherent authority to require executive branch state agencies such as MDT to conduct studies and make recommendations. Under 90-4-311, MCA, all state agencies, including the PSC, are required to implement supply alert and emergency measures ordered by the Governor. An order to examine restrictions on fuel hauling and make recommendations regarding them would be covered under that statute. Therefore, (4) is not necessary and should be repealed.

Section (5) gives the Governor authority to order state agencies with more than 10,000-gallon storage capacity for middle distillates of petroleum to report reserves if ordered by the Governor in a supply alert. The Governor has both inherent and statutory authority to make such orders and state agencies are required to follow them. 90-4-311, MCA. Therefore, no rule is necessary.

Section (6) authorizes the Governor to request the federal Department of Energy (DoE) to redirect supplies of middle distillates to Montana. The Governor has inherent authority to make such a request; therefore, this provision is unnecessary. In addition, the DoE has no obligation to comply, so this provision should not be in a rule.

14.8.109 PRIVATE SECTOR SUPPLY ALERT PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA
IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.109 for the same reasons given for the proposed repeal of ARM 14.8.106.

14.8.110 ENERGY SUPPLY ALERT PROCEDURES - AVIATION
GASOLINE

AUTH: 90-4-316, MCA
IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.110 because it is unnecessary. The Governor has the inherent authority to make requests for voluntary action to aviation gasoline distributors.

14.8.121 ENERGY EMERGENCY PROCEDURES - MOTOR
GASOLINE

AUTH: 90-4-316, MCA
IMP: 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.121, concerning energy emergency procedures for motor gasoline, because the two rules to which it refers, ARM 14.8.122 and 14.8.123, are being proposed for repeal.

14.8.122 PUBLIC SECTOR ENERGY EMERGENCY PROCEDURES -
MOTOR GASOLINE

AUTH: 90-4-316, MCA
IMP: 90-4-310, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.122 because it is unnecessary. The Governor has authority under 90-4-310, MCA, to order state agencies to act in an energy emergency and has inherent authority to make non-binding requests of state employees.

14.8.123 PRIVATE SECTOR EMERGENCY PROCEDURES - MOTOR
GASOLINE

AUTH: 90-4-316, MCA
IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.123 because it is unnecessary. Section (1), concerning requests by the Governor to companies to voluntarily reduce energy consumed in travel, is unnecessary because the Governor has the inherent authority to make requests of the private sector. In addition, because compliance would be voluntary, it is not appropriate to have it in rule. The remaining sections, concerning days and hours of operation and numbers of gasoline containers that may be dispensed in an energy emergency, are unnecessary because the Governor already has

the authority under 90-4-310, MCA, to make such orders. It is more appropriate to specify the details of such orders in an emergency declaration or subsequent order.

14.8.124 ODD-EVEN DAY GASOLINE DISPENSING SYSTEM

AUTH: 90-4-316, MCA
IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.124 for the same reasons given for the proposed repeal of ARM 14.8.123.

14.8.125 ENERGY EMERGENCY PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA
IMP: 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.125 because the two rules to which it refers, ARM 14.8.126 and 14.8.127, are being proposed for repeal.

14.8.126 PUBLIC SECTOR ENERGY EMERGENCY PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA
IMP: 90-4-310, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.126, which authorizes the Governor to require building owners to lower thermostat settings for space heating and to take other measures to conserve consumption of middle distillates, because it is unnecessary. The Governor already has the authority in 90-4-310, MCA, to order government agencies and the private sector to conserve energy, including middle distillates, in an energy emergency. The Governor already has authority under 90-4-310(4)(b), MCA, to suspend or modify requirements that affect the use of energy, including middle distillates.

14.8.127 PRIVATE SECTOR ENERGY EMERGENCY PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA
IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.127, which authorizes the Governor to order retailers, motor carriers, trucks, and commercial establishments to take certain actions to conserve middle distillates and to prohibit practices that raise their prices, for the same reasons given for the repeal

of ARM 14.8.126.

14.8.128 ENERGY EMERGENCY PROCEDURES - AVIATION FUEL

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.128, which authorizes the Governor to request aviation gasoline sellers to prioritize aviation gas sales to emergency services, because it is unnecessary. The Governor already has the authority under 90-4-310(4)(a), MCA, to implement priorities for the allocation of any type of fuel. In addition, the existing rule authorizes the Governor to make requests for voluntary action, which the Governor has inherent authority to do. Because the request is for voluntary action, it does not belong in a rule.

14.8.201 PURPOSES

AUTH: 90-4-316, MCA

IMP: 90-4-316, MCA

REASON: The Governor is proposing to repeal ARM 14.8.201 for the same reasons given for the proposed repeal of ARM 14.8.101.

14.8.202 DEFINITIONS

AUTH: 90-4-316, MCA

IMP: 90-4-316, MCA

REASON: The Governor is proposing to repeal ARM 14.8.202 for the same reasons given for the proposed repeal of ARM 14.8.102.

14.8.203 REGISTRATION

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: ARM 14.8.203 authorizes the Governor to request certain governmental and intergovernmental entities and Montana utilities to designate an employee to supply information requested under this rule. It is proposed to be repealed because a rule is not necessary for the Governor to make a non-binding request. Requirements for contact and substantive information from energy distributors are proposed for adoption in New Rule III.

14.8.204 UTILITY CURTAILMENT PLANS

AUTH: 90-4-316, MCA

IMP: 90-4-307, MCA

REASON: The Governor is proposing to repeal ARM 14.8.204, concerning utility curtailment plans, because it is unnecessary. The Governor has authority under 90-4-307(1), MCA, to require curtailment plans from distributors and they are required to comply by 90-4-313, MCA. The submission must be "in the form and within limits" specified by the Governor. Therefore, there is adequate authority in statute and a rule is unnecessary.

14.8.205 INFORMATION

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The Governor is proposing to repeal ARM 14.8.205, which concerns information required to be submitted to the state by certain non-profit corporations and utilities. New Rule III would contain requirements for distributors of energy to submit information to the state concerning energy shortages that could lead to declaration of a supply alert or emergency and for information required to be submitted during an emergency or supply alert. The reasons for repeal of provisions of ARM 14.8.205 that are not being proposed to be adopted in New Rule III are set forth below.

The Governor is proposing to repeal (1) because it is no longer necessary. Reservoir inventory information is now publicly available. In addition, the Governor cannot by rule impose requirements on federal or non-Montana agencies. Therefore, no rule is needed.

Section (2), concerning reporting of load relative to resources by an electrical distributor experiencing a shortage, is proposed to be deleted and replaced with language in New Rule III(1) that clarifies and specifies what triggers the reporting requirement and the frequency of reporting. "Utility" is used in the language proposed to be repealed and "distributor," which is defined broadly in 90-4-302(2), MCA, to mean any entity engaged in generating, producing, transmitting, or distributing energy in Montana, is proposed to be used in the new language because it more accurately identifies the functions of an electricity business that, if it experienced a shortage, could result in the declaration of a supply alert or emergency. The information listed in proposed New Rule III(1) is necessary for the Governor to be able to determine if a supply alert or emergency is necessary.

The requirement for information proposed in New Rule III(2) is necessary for the Governor to be able to manage a supply alert or emergency while those declarations are in effect.

Current (3) is proposed to be repealed because the proposed language in New Rule III(2) contains reporting requirements.

14.8.206 EVALUATING INFORMATION

AUTH: 90-4-316, MCA

IMP: 90-4-308, MCA

REASON: The Governor is proposing to repeal (1) because it concerns voluntary curtailment. The Governor has the inherent authority to request voluntary curtailment of electrical energy distribution. Because any curtailment under (1) would be voluntary, no rule is necessary.

The Governor is proposing to repeal (2) because it concerns evaluations of information received under ARM 14.8.205 concerning depletion of reservoir generating capabilities and recommendations for different stages of mandatory curtailment based on the severity of those depletions. Section (2) is unnecessary because the Governor has authority in 90-4-310(4), MCA, to curtail energy usage, and the authority to take curtailment actions regarding specific stages of an emergency is merely a subset of the general authority to require curtailment. The stages of an emergency in the rule are not the way emergencies are handled today, and are therefore unnecessary. Today's approach is to address the particular responses through an incident command approach, where the appropriate actors determine the type and level of response needed. New Rule IV would require the Department of Environmental Quality to evaluate the information provided under New Rule III and propose action to the Governor.

14.8.210 DETERMINING THE EXISTENCE OF AN ENERGY SUPPLY ALERT OR ENERGY EMERGENCY

AUTH: 90-4-316, MCA

IMP: 90-4-308, 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.210 because it is unnecessary for the following reasons. The energy policy committee referred to in the rule no longer exists. Proposed New Rule IV would authorize the Department of Environmental Quality to make recommendations to the Governor concerning electrical supply shortages. Section 90-4-308, MCA, sets out the matters the Governor is required to consider when determining whether to declare a supply alert or emergency and 90-4-306, MCA, requires the Governor to solicit the advice of consumers and distributors both before and during all phases of supply alerts or emergencies.

14.8.211 DECLARATION OF ENERGY SUPPLY ALERT OR ENERGY EMERGENCY

AUTH: 90-4-316, MCA

IMP: 90-4-309, 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.211 for the following reasons. The first sentence, which requires the Governor to declare a supply alert or emergency on determining that the requisite situation exists, is unnecessary because 90-4-310, MCA, authorizes the Governor to declare an energy supply alert or emergency on a finding that certain statutory factors have been met. The requirements of the remaining sentences, which require the Governor to notify state and local governments and utilities affected by a supply

alert or emergency, of the declaration and its requirements and to issue a press release, would be addressed in proposed New Rule II.

14.8.212 ENERGY SUPPLY ALERT PROCEDURES

AUTH: 90-4-316, MCA

IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.212 because it does not have any substantive requirements and the only rules to which it refers, ARM 14.8.213 and 14.8.214, are being proposed for repeal.

14.8.213 SUPPLY ALERT STAGE 1

AUTH: 90-4-316, MCA

IMP: 90-4-309, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.213 because it is unnecessary or inconsistent with legal authority. Section (1) does not contain any substantive requirements and so is unnecessary.

Section (2) is unnecessary because the Governor has authority under 90-4-309, MCA, to order state agencies and local governments to act in a supply alert and they are required by 90-4-311, MCA, to comply. The portion of (2) authorizing the Governor to make requests of utilities and consumers for voluntary action in a supply alert is unnecessary because the Governor has inherent authority to make requests and because the requests for voluntary action are not binding and are not appropriate in a rule.

Section (3) is not necessary because it indicates that compliance by consumers is voluntary and does not impose any duties on local governments or utilities.

Section (4) is not necessary because it states that enforcement is not applicable to the requirements of (2). The Governor has authority under 90-4-309 and 90-4-311, MCA, to require state agencies and local governments to comply with orders in a supply alert.

14.8.214 SUPPLY ALERT STAGE 2

AUTH: 90-4-316, MCA

IMP: 90-4-309, 90-4-311, MCA

REASON: ARM 14.8.214 is proposed for repeal because it is not necessary to establish requirements for stages of a supply alert and for the same reasons given for the repeal of ARM 14.8.213.

14.8.218 ENERGY EMERGENCY PROCEDURES

AUTH: 90-4-316, MCA

IMP: 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.218 because all of the rules to which it refers are being proposed for repeal. The Governor's authority to act after declaring an emergency is set out in 90-4-310, MCA, and no rule is necessary.

14.8.219 ENERGY EMERGENCY STAGE 1

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-312, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.219 because its provisions are either unnecessary or repeat authority already in statute.

14.8.220 ENERGY EMERGENCY STAGE 2

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-311, 90-4-312, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.220 because it is unnecessary. The reason for eliminating stages of an emergency is the same as the reason given for the proposed repeal of ARM 14.8.206. Sections (2)(c)(i) and (ii) authorize the Governor to make requests of certain state, federal, and private entities. This is unnecessary because the Governor has inherent authority to make requests. In addition, the Governor has broad authority in 90-4-310, MCA, to act in an emergency and no rule is necessary.

14.8.221 ENERGY EMERGENCY STAGE 3

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-312, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.221 because it addresses stage 3 emergencies and the stages of emergencies in this subchapter would be deleted for the reasons given for the proposed repeal of ARM 14.8.206.

14.8.225 PRIORITY LOAD CUSTOMERS - EXEMPTION PROCEDURE

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.225 because it is unnecessary and does not reflect how electrical utilities supply power to users. It addresses stage 2 emergencies and the stages of emergencies in this subchapter would be deleted for the reasons given for the proposed repeal of ARM 14.8.206. The Governor has authority to curtail use of electricity in an

emergency. In addition, utilities generally lack the ability to control the supply to individual users, except for a few large users that have direct, or "radial," lines that service them. The department may work with electrical utilities to identify essential users and develop approaches to reduce usage by nonessential users and help ensure supply to essential users.

14.8.226 NON-PRIORITY LOAD APPELLANTS

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.226 because it is unnecessary. It concerns requests for, appeals from, denial of, and non-priority load exemptions in a stage 2 emergency. However, the stage classifications of an emergency are proposed for repeal. See the reason for proposed repeal of the stages of an emergency in ARM 14.8.206. So, this rule would no longer be appropriate and should be repealed. The Governor has authority under 90-4-310, MCA, to curtail the use of electricity in an emergency and to require curtailment plans from utilities. Any entity required to curtail may communicate informally with the Governor. The reasons for elimination of an administrative appeals process are set out in the statement of necessity for the repeal of ARM 14.8.229.

14.8.227 MONITORING

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-312, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.227, which addresses monitoring during two stages of energy supply alerts and three stages of energy emergencies. However, those stages are being proposed to be eliminated. See the proposed repeal of ARM 14.8.206 and the reasons for that proposed repeal.

In addition, (1)(c) of the existing rule purports to require action from two non-Montana entities that are voluntary associations of electrical generators that coordinate regional electric power matters, the Northwest Power Pool and the Mid-continent Area Power Pool. However, Montana lacks authority over those entities because they are private non-profit entities located outside of Montana. Therefore, this rule should be repealed.

14.8.228 ENFORCEMENT

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-311, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.228 because it is unnecessary. Requirements for compliance with and enforcement of orders issued during a supply alert or emergency are contained in 90-4-313, 90-4-314, and 90-4-319, MCA, and it is not necessary to repeat their requirements in a rule. In addition,

(3) concerns curtailment and the Governor has curtailment authority in 90-4-310(4)(a), MCA, so the authority in this rule is not necessary.

Sections (4) through (6) concern surcharge and rates for consumption of electricity and pass-through of expenses incurred in responding to a supply alert or emergency. The Public Service Commission has authority in 69-8-210, MCA, and ARM 38.5.8226 to approve interim rate increases to allow cost recovery. To the extent the Governor has authority in 90-4-310, MCA, over the matters in (4) through (6), no rule is necessary.

14.8.229 APPEALS

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.229 because (1) there is no authority in statute for appeals, and (2) an appeals process is unnecessary and unlikely to be fruitful. The short-term nature of emergencies makes it unlikely that an appeal could be heard or decided, and that relief could be granted, before the emergency terminates. It is more likely that a court action for a temporary restraining order or preliminary injunction could be heard and decided, with appropriate relief granted, while the emergency is still in effect.

14.8.230 ADJUSTMENTS

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.230 for the same reasons set forth for the proposed repeal of ARM 14.8.229.

14.8.301 PURPOSE

AUTH: 90-4-316, MCA

IMP: 90-4-305, 90-4-316, MCA

REASON: The Governor is proposing to repeal ARM 14.8.301 for the same reasons given for the proposed repeal of ARM 14.8.101.

14.8.302 DEFINITIONS

AUTH: 90-4-316, MCA

IMP: 90-4-316, MCA

REASON: The Governor is proposing to repeal ARM 14.8.302 for the same reasons given for the proposed repeal of ARM 14.8.102.

14.8.303 REQUIREMENT TO PROVIDE ADVANCE NOTIFICATION OF

PETROLEUM SUPPLY SHORTAGES

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of (1) and (2) is the same as set forth for the repeal of ARM 14.8.205. New Rule III would contain requirements for distributors of energy to submit information to the state concerning energy shortages that could lead to a declaration of a supply alert or emergency and for information required to be submitted during an emergency or supply alert.

14.8.304 REQUIREMENT TO FILE MONTHLY REPORTS

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: This rule is proposed to be repealed because the existing rules are unwieldy; their provisions for submission of information would be combined into New Rule V. New Rule V would contain requirements that refiners and gas plant operators provide the department with certain monthly reports.

14.8.305 REQUIREMENT TO FILE ANNUAL REPORTS

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: This rule is proposed to be repealed because it is unnecessary. EIA 25 was an annual report required by the Energy Information Administration, a part of the federal Department of Energy. It concerned monthly distribution of petroleum products by retail distributors. That report is no longer used. Another report, EIA 782c, is issued monthly and has supplanted EIA 25. The Governor is proposing to require submission of that report in New Rule V. Therefore, no report is necessary, and the rule should be repealed.

14.8.306 FORM AND FORMAT OF REPORTS

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of all rules in ARM Title 14, chapter 8, subchapters 1 through 3 and the adoption of a new subchapter 4 has been set forth above. The provisions concerning form and format of the reports would be added to New Rule V.

14.8.307 REPORTING PERIODS

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The Governor is proposing to repeal ARM 14.8.307 because it is unnecessary. The requirements of (1) are proposed to be moved to New Rule V to consolidate the reporting periods with the substantive requirements for the reports. Provisions requiring submission of reports for past periods are proposed to be repealed because the department has all the historical natural gas and refined petroleum data necessary to monitor historical changes in petroleum and natural gas movements across the state. Section (2) concerns reporting periods for submissions required in ARM 14.8.305, which is being proposed for repeal. Therefore, (2) is unnecessary and should be repealed.

14.8.308 RESUBMISSIONS

AUTH: 90-4-316, MCA
IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of all rules in ARM Title 14, chapter 8, subchapters 1 through 3 and the adoption of a new subchapter 4 has been set forth above. The provisions concerning resubmission of erroneous, incomplete, illegible, or missing reports would be contained in New Rule VI.

14.8.309 REPORTING AGENCY

AUTH: 90-4-316, MCA
IMP: 90-4-305, MCA

REASON: The Governor is proposing to repeal ARM 14.8.309 because it is unnecessary. All the rules referenced in the rule either have been proposed for repeal or have been proposed to be amended to require that submissions to the department must be made via e-mail. Therefore, ARM 14.8.309 should be repealed.

14.8.310 TRADE SECRETS

AUTH: 90-4-316, MCA
IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of all rules in ARM Title 14, chapter 8, subchapters 1 through 3 and the adoption of a new subchapter 4 has been set forth above. The provisions concerning protection of trade secrets or other proprietary information are being proposed to be included in New Rule VII.

14.8.311 EXEMPTIONS

AUTH: 90-4-316, MCA
IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of all rules in ARM Title 14, chapter 8, subchapters 1 through 3 and the adoption of a new subchapter 4 has been set forth above. The provisions concerning exceptions from compliance are being proposed to be included in New Rule VIII.

5. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply:

- (1) "Confidential information" has the same meaning as in 2-6-1002, MCA.
- (2) "Customer" means any individual, partnership, corporation, firm, governmental entity, or organization that purchases an energy resource within Montana.
- (3) "Department" or "DEQ" means the Department of Environmental Quality as defined in 2-15-3501, MCA.
- (4) "Distributor" has the same meaning given in 90-4-302, MCA.
- (5) "Emergency" means an energy emergency as defined in 90-4-302, MCA.
- (6) "Energy" has the same meaning given in 90-4-302, MCA.
- (7) "Firm" means any person, as defined in 90-4-302, MCA, engaged in any activity covered by these rules.
- (8) "Local government" means any county, city, town, municipal corporation, or other political subdivision of the state.
- (9) "Person" has the same meaning given in 90-4-302, MCA.
- (10) "Petroleum products" has the same meaning given in 90-4-302, MCA.
- (11) "Prime petroleum supplier" has the same meaning given in 90-4-302, MCA.
- (12) "Supply alert" means an energy supply alert as defined in 90-4-302, MCA.

AUTH: 90-4-316, MCA

IMP: 90-4-305, 90-4-309, 90-4-310, MCA

REASON: These terms are used to set out substantive requirements in the rules in new subchapter 4 and need to be defined. "Emergency" and "supply alert" are being defined as a shorthand way of referring to an "energy emergency" and an "energy supply alert" to make the rules easier to read.

NEW RULE II DECLARATION OF SUPPLY ALERT OR EMERGENCY

(1) The Governor shall give written notice to state agency heads, local government entities, appropriate trade groups, and distributors affected by a declaration of a supply alert or emergency of the declaration and its requirements. The Governor shall issue a news release describing the action taken.

AUTH: 90-4-316, MCA

IMP: 90-4-309, 90-4-310, 90-4-311, 90-4-313, 90-4-314, MCA

REASON: New Rule II would require the Governor to give written notice to entities affected by a declaration of a supply alert or emergency of the declaration and its contents and to issue a news release describing the action taken. The reason is that affected entities and the public should be informed of such a declaration.

NEW RULE III INFORMATION REQUIRED OF DISTRIBUTOR (1) If a distributor experiences an event that the distributor believes may cause or is causing an energy supply shortage or other condition that may result in a supply alert or emergency as defined in 90-4-302, MCA, or if the Governor believes such an event has occurred and notifies the distributor, the distributor shall, within 24 hours after the event occurs or the Governor gives notification, report the event to the department's duty officer at (406) 431-0014, and send the following information concerning the event to the department at DEQEnergyEmergency@mt.gov;

- (a) a current status report including geographic area of impact;
- (b) estimated effect on energy customers and on health/human safety;
- (c) effect of the incident on infrastructure, including other energy sectors, transportation, food distribution, and emergency services;
- (d) expected duration;
- (e) recommended actions the public or industry can take to reduce or adjust consumption;
- (f) the distributor's contact information;
- (g) any other information the distributor thinks might be helpful in a supply alert or emergency; and
- (h) any other information requested by the department that the department determines is necessary to address the supply alert or emergency.

(2) During a supply alert or emergency each distributor named in the declaration of the supply alert or emergency shall submit via e-mail to DEQ at DEQEnergyEmergency@mt.gov at a frequency determined by the department or by another method if requested by the department, a report that contains the information in (1).

(3) The department shall inform the public about each supply alert or emergency and actions being taken to address it and actions that the public is requested or required to take.

AUTH: 90-4-316, MCA

IMP: 90-4-305, 90-4-308, 90-4-309, 90-4-310, MCA

REASON: ARM 14.8.205 and 14.8.303 require each electricity distributor and each firm within certain categories of petroleum distributors to supply information to the state, if a problem may prevent the distributor from meeting energy requirements of Montana customers. They are proposed to be repealed and New Rule III would consolidate information submission requirements into one rule covering all major energy sectors. The department and Governor's office rely on industry and the public to provide information on events that may lead to an

energy supply alert or energy emergency. Section (1) would require energy distributors to inform the department when an event occurs that they or the Governor believe causes, or may cause, an energy supply shortage or other condition that may result in a declaration of a supply alert or emergency. The thresholds for a situation for which distributors are expected to report to the department are taken from the definitions of energy supply alert and energy emergency in 90-4-302, MCA. The reason for basing the thresholds on the statute is that the statute provides flexibility in determining what is an important event for each situation. As each energy situation will be different, this flexibility is needed. Section (1) sets out the information that a distributor would be required to submit to the department in those circumstances. That information is necessary for the Governor to be able to determine if a declaration of a supply alert or emergency is necessary. Because a distributor is familiar with its energy supply system, its customers, and how an event could affect them, it is reasonable for distributors to submit to the department the information in (1) concerning the geographic area affected, the estimated effect on energy customers and on health/human safety, infrastructure, including other energy sectors, transportation, food distribution, and emergency services, expected duration, and recommended actions the public or industry can take to reduce or adjust consumption, as well as other information the distributor or department believes helpful or necessary to address the event.

A phone number for the department duty officer and an e-mail is provided for easy reference. The department will update distributors if this contact information changes.

Section (2) would require, during an alert or emergency, each distributor named in a declaration to submit information to the department, via e-mail daily, or at a different frequency or by another method if necessary, the information in (1). This information is necessary to allow the Governor to manage an alert or emergency while those declarations are in effect.

Section (3) would require that the department inform the public about each declaration of a supply alert or emergency and actions taken or requested to be taken. This is similar to requirements in ARM 14.8.103 and 14.8.211 and is necessary to keep the public informed and to obtain action from the public needed to address the shortage.

NEW RULE IV EVALUATING INFORMATION (1) The department shall evaluate the information provided under [NEW RULE III] and recommend to the Governor one or more actions based on the severity of the shortage.

AUTH: 90-4-316, MCA

IMP: 90-4-304, 90-4-305, 90-4-308, 90-4-309, 90-4-310, MCA

REASON: New Rule IV is proposed to require the Department of Environmental Quality to evaluate the information provided under New Rule III and propose appropriate action to the Governor. This is necessary so that relevant information about an energy shortage will be evaluated and that appropriate action will be recommended to the Governor.

NEW RULE V REQUIREMENT TO FILE MONTHLY REPORTS (1) The following entities shall submit monthly reports as follows:

(a) Each refinery shall submit copies of the federal Monthly Refinery Report (EIA-810).

(b) Each petroleum pipeline company that delivers petroleum products to Montana customers shall submit a monthly report, on the form prescribed by the department, of:

(i) pipeline receipts, deliveries, and inventories by terminal location and consignee for all petroleum products delivered through its Montana system; and

(ii) its total quantity of out-of-state imports and exports.

(c) Each prime petroleum supplier shall submit a copy of that supplier's federal Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption (EIA-782C).

(2) Each report required to be submitted in this rule must be submitted to the department by e-mail to petroleumdatareporting@mt.gov within 20 days after the end of the month for which the report is being provided.

(3) Each monthly report required in this rule is for a calendar month.

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The Governor is proposing to adopt New Rule V to require certain types of distributors of petroleum products in Montana to submit information to the Department of Environmental Quality on a monthly basis concerning the quantities of petroleum products distributed in the state. This information is necessary for the department to use in evaluating whether shortages are occurring that might lead to a declaration of a supply alert or emergency and to monitor energy supply and consumption during a supply alert or emergency.

NEW RULE VI CORRECTING SUBMISSIONS (1) Any documents submitted under [NEW RULE V] that are subsequently revised must be resubmitted in their revised form by the submitting firm within 10 days after the revision is completed.

(2) The department may request a distributor required to submit a report under this subchapter to replace an illegible or missing report. A distributor shall submit a replacement to the department via e-mail to petroleumdatareporting@mt.gov within 30 days after the department sends a written request to the firm by e-mail or U.S. postal mail.

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The Governor is proposing to adopt New Rule VI to authorize the Department of Environmental Quality to require an entity that is subject to reporting requirements to submit, within 30 days after being sent a written request, revised or replacement reports if either (1) information is erroneous or incomplete and the

actual volume is at least five percent different than reported, or (2) a report is missing or illegible. The Governor believes that 30 days gives a reporting party sufficient time to prepare and transmit a revised or replacement report. The requirement is necessary to ensure that the department has adequate information to evaluate shortages and to advise the Governor on the need to declare an alert or emergency or to take specific action during an alert or emergency.

NEW RULE VII TRADE SECRETS, CONFIDENTIAL, OR PROPRIETARY INFORMATION (1) Information submitted under 90-4-305(2), MCA, is subject to 90-4-305(6), MCA.

(2) For information not listed in 90-4-305(2), MCA, that is required to be submitted under this subchapter, if a distributor, as defined in 90-4-302, MCA, believes it to be confidential, trade secrets, or of a proprietary nature, and wishes:

(a) not to submit it to the department, the distributor shall inform the department and describe the nature of the information. Unless the department obtains a court order requiring disclosure, the distributor is not required to submit the information to the department;

(b) to submit the information to the department and have it protected it as confidential information, the distributor shall provide an affidavit to the department that establishes, to the department's satisfaction, that the information is confidential. On determining that the information is confidential, the department shall hold the information as confidential and, upon receiving a request for disclosure, may not disclose it unless it first informs the submitter and provides a reasonable period for the submitter to obtain a court order designating the information confidential.

(3) Unless a court orders otherwise, the department shall withhold from public scrutiny information submitted to it under this subchapter if the submitter provides an affidavit that establishes, to the department's satisfaction, that release of the information jeopardizes the safety of an individual or the public.

AUTH: 90-4-316, MCA
IMP: 2-6-1002(1), MCA

REASON: The Governor is proposing to adopt New Rule VII to address claims by entities submitting information required in new subchapter 4 that the submitted information is confidential and may not be disclosed to the public.

First, 90-4-305(6), MCA, provides that the information required to be submitted in 90-4-305(2), MCA, which concerns certain information about petroleum, may not be divulged if it is specific to a particular distributor and that public officers or employees may not be required to release it to a party to an action or proceeding unless the information is directly involved in the action or proceeding. To clarify that the department will follow that statute, the rule refers to the statutory provisions.

Second, the Governor believes it is necessary to set out, in rule, the process for the proper protection or disclosure of other information required to be submitted under the energy supply alert and emergency statutes and rules. Therefore, the

Governor is proposing to adopt, in rule, the process established by the Legislature and the Montana Supreme Court to give effect both to the public's right to review and copy public documents and a submitting firm's property rights in, or concerns about public safety from public disclosure of, submitted information.

In 2015, the Legislature repealed the public records laws and adopted new laws in part 10 of Title 2, chapter 6, MCA, codified at 2-6-1002(1), MCA. Section 2-6-1002(1), MCA, defines confidential information as "information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is: "(d) designated as confidential by statute or through judicial decisions, findings, or orders."

Section 2-6-1002(11), MCA, defines "public information" broadly, but excludes from that definition "confidential information that must be protected against public disclosure under applicable law." Section 2-6-1003(1), MCA, states that "every person has a right to examine and obtain a copy of any public information of this state," but (2) authorizes the department to "withhold from public scrutiny information relating to individual or public safety...if release of the information jeopardizes the safety of...the public...". These statutory changes must be viewed in the context of decisions of the Montana Supreme Court. That Court has interpreted the Montana Constitution to require protection of a business's trade secrets and other proprietary and valuable information. In *Great Falls Tribune v. Public Service Commission*, 2003 MT 369, ¶ 39, 319 Mont. 38, 82 P.3d 876, the Court held that, while a corporation has no privacy right to prevent public disclosure of its information, it may have a property right if the information is a trade secret or property that is entitled to protection from being taken for public use without just compensation. The Court further held that, to claim protection of a property right in information, the submitting entity must file a supporting affidavit with the state agency receiving the information that shows that the information "constitutes property rights which are protected under constitutional due process requirements." The Court further stated that the showing must be specific enough for the agency, any objecting person, and reviewing authorities to clearly understand the nature and basis of the claims to confidentiality. *Great Falls Tribune*, ¶¶ 56-57. The Court also determined that, given the purpose and expertise of state administrative agencies, the receiving state agency must make the initial determination of whether the information is protected from disclosure. ¶¶ 43, 56.

So, to give effect to 2-6-1002 and 2-6-1003, MCA, the Governor is proposing rule language authorizing the department to withhold from public scrutiny information submitted to it under this subchapter if the department determines, based on an affidavit provided to it by the submitter of the information, that the information is a trade secret, proprietary or otherwise confidential, or that release of the information jeopardizes the safety of an individual or the public.

If the department determines that the information should be withheld from public scrutiny because of its confidential business nature, the department may not disclose the information until, upon receiving a request for disclosure, it informs the submitter of the request and provides the submitter a reasonable period to obtain a court order designating the information confidential. If the department determines that release of the information would jeopardize individual

or public safety, the department may not release it unless a court orders the release.

The Governor intends that the process in this proposed New Rule will also apply to a customer, such as an electric co-op, that is also a distributor and that is requested by a distributor to submit information to it.

NEW RULE VIII EXCEPTIONS FROM COMPLIANCE (1) The Governor, in a declaration of an alert or emergency, may authorize the department to relieve a firm or governmental entity from a duty to comply with a provision of this subchapter if the department determines that compliance is not necessary to plan, prepare for, or implement a supply alert or emergency.

AUTH: 90-4-316, MCA

IMP: 90-4-305, 90-4-313, MCA

REASON: New Rule VIII would authorize the Department of Environmental Quality to relieve a firm or governmental entity from complying with a requirement of the energy emergency rules in new ARM Title 14, chapter 8, subchapter 4 if the department determines that compliance is not necessary to plan, prepare for, or implement a supply alert or emergency. The reason for this new rule is that the intent of these rules is to require actions that will significantly help response and recovery efforts in an impending or actual energy supply alert or emergency. Because the Governor wishes to promote regulatory efficiency and minimize costs, actions that do not significantly help response and recovery efforts would not be of use to the state and therefore should not be required. Delegating to the department, which has staff with expertise concerning energy supply matters, the authority to grant relief from complying with a requirement would allow it to act to accomplish the purposes of the subchapter without requiring unnecessary actions.

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 Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., February 28, 2020. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water

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

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

Reviewed by:

GOVERNOR'S OFFICE

/s/ Raphael Graybill
RAPHAEL GRAYBILL
Rule Reviewer

BY: /s/ Patrick Holmes
PATRICK HOLMES
Natural Resource Policy Advisor

Certified to the Secretary of State, January 21, 2020.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On August 23, 2019, the Department of Environmental Quality published MAR Notice No. 17-406 pertaining to the public hearings on the proposed adoption of the above-stated rules at page 1239 of the 2019 Montana Administrative Register, Issue Number 16.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., February 24, 2020, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

3. In response to comments received on the Notice of Public Hearing on Proposed Adoption, MAR Notice No. 17-406 (original notice), the department is proposing changes to its originally proposed TENORM rules. Specifically, the department is proposing to lower the radionuclide concentration (picocuries per gram – pCi/g) limit for the acceptance of TENORM waste at a TENORM waste management system; lower the maximum gate screening exposure level (microroentgen per hour - μ R/hr); remove the requirements for calculating a rolling average of the radionuclide concentration of waste in a TENORM waste unit; modify the requirements for filter media; and modify the requirements if the total effective dose equivalent (milliroentgen equivalent man – mrem) limit is exceeded at the boundary of the TENORM waste management system.

The department believes these are significant changes to the original notice and is reopening the public comment period with respect to the changes set forth in this supplemental notice only. Please provide comments only to this supplemental notice and not to the original notice. The department is continuing to review the comments and information submitted in response to its original notice, and the department anticipates other changes to the proposed rules at the time of adoption in response to the comments it has received to date. Timely comments previously submitted on the original notice, as well as comments received in response to this supplemental notice, will be addressed in the adoption notice for the proposed rules.

4. The department proposes to amend the following proposed rules with the following changes from the original notice, new matter underlined, deleted matter interlined:

NEW RULE III. TENORM WASTE MANAGEMENT SYSTEM LIMITS AND RESTRICTIONS

(1) Except as provided in (2), the owner or operator of a TENORM waste management system shall ensure that:

(a) TENORM waste entering the system does not exceed a gate screening level of ~~200~~ 100 microrentgen per hour (μ R/hr), excluding background, in accordance with [NEW RULE VI](1)(b);

(b) TENORM waste entering the system does not exceed a concentration of ~~200~~ 50 picocuries per gram (pCi/g) of combined radium Ra-226 and Ra-228 determined by the waste characterization requirements in [NEW RULE VI](1)(d); and

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

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

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

(3) and (4) remain as proposed.

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

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

(7) remains as proposed but is renumbered (5).

~~(8)~~(6) If the owner or operator of a TENORM waste management system or the department determines that ~~the combined average concentration of 50 pCi/g in a TENORM waste unit has been exceeded, or that the TEDE limit of 100 mrem/y, excluding background radiation, assessed at the licensed boundary has been exceeded,~~ the limit in (1)(c) has been exceeded, the owner or operator shall:

(a) immediately stop accepting TENORM waste;

~~(a)~~(b) within ~~5 days~~ 24 hours after the determination, or notification by the department, place a notice in the operating record indicating the exceedance and notify the department electronically or by telephone that this notice was placed in the operating record; and

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

~~(9)~~(7) The corrective action plan required in ~~(8)~~(b) ~~(6)~~(c) must:

- (a) include corrective measures that will enable the TENORM waste management system to meet the requirements in (1)(c) ~~and (d)~~; and
 - (b) prohibit the acceptance of TENORM waste until the corrective measures have remedied the exceedance; and
 - ~~(b)(c)~~ establish a department-approved timeframe on a case-by-case basis for implementing the proposed corrective action plan.
- (10) and (11) remain as proposed but are renumbered (8) and (9).

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON:

Proposed Lowered Acceptance Concentration Level of 50 pCi/g and Elimination of Separate Rolling Average in TENORM Waste Unit: In the original notice, the department proposed a maximum combined concentration limit within a TENORM waste unit of 50 pCi/g, but proposed to allow TENORM waste management systems to accept individual loads of TENORM waste with concentrations up to 200 pCi/g. In proposing this approach, the department noted that allowing disposal of an occasional load of TENORM waste higher than 50 pCi/g would discourage illegal dumping while maintaining protection of human health and the environment, as six years of data collected by the department indicates that most incoming loads of TENORM waste are lower than 50 pCi/g.

After issuing its original notice, however, the department has been able to determine more precisely the complexities and variabilities involved with implementing a rolling average of 50 pCi/g with an upper acceptance limit of 200 pCi/g. Given these complexities and uncertainties, the department is amending (1)(b) to establish a maximum acceptance concentration of 50 pCi/g for all TENORM waste and is eliminating the separate rolling concentration average within the TENORM waste unit as was set forth in (1)(c).

By proposing a fixed upper acceptance limit, the department is addressing concerns raised regarding implementation and enforcement of the limits proposed in the original notice. The department originally proposed allowing each facility to establish its own procedures for ensuring the 50 pCi/g average in-place concentration would not be exceeded because there is no standardized method for calculating the in-place average concentration of TENORM waste within a TENORM waste unit. After further consideration, the department has determined that not having a standardized method would not provide the consistency needed for the department to ensure compliance. Therefore, the department is proposing to eliminate the need for the landfill operator to calculate a running average of the radium concentration in a TENORM waste unit because all accepted waste must have a combined radium concentration at or below 50 pCi/g. Any load above 50 pCi/g would be rejected for disposal at a TENORM waste management system.

A fixed limit of 50 pCi/g provides greater certainty and a less confusing regulatory structure for owners and operators of TENORM waste management systems. Incoming loads of TENORM waste would either pass or fail the 50 pCi/g acceptance limit, and owners and operators of TENORM waste management

systems would no longer be required to create procedures for ensuring an average combined concentration of 50 pCi/g within the TENORM waste unit. Removing this additional calculation would streamline recordkeeping and the determination as to whether an individual load of TENORM waste may be accepted. Additionally, generators and transporters of TENORM waste would have the added certainty that all waste meeting the acceptance levels under (1)(a) and (1)(b) may be accepted at a facility.

The amended proposed rules also assist with regulatory oversight over TENORM waste management systems. The department would not have to account for various methods that may be used to ensure the rolling average concentration within each TENORM waste unit is maintained. The amended proposed rules also make it easier for the department to verify and enforce the limit proposed in (1)(b) by reducing the number of variables associated with maintaining an average concentration with the TENORM waste unit.

Setting a static upper acceptance limit of 50 pCi/g also would decrease the annual dosage in mrem to landfill workers because workers would not handle TENORM waste over 50 pCi/g. The landfill worker is assumed to be the most exposed individual. An average concentration of 50 pCi/g combined radium was shown to be protective of the worker using a RESRAD dose assessment code and applying reasonable exposure factors for the worker. A fixed upper limit provides greater assurance that the 100 mrem per year dose to a member of the public would not be exceeded.

Establishing a fixed upper limit would also provide consistency with how neighboring states are regulating or plan to regulate TENORM waste. The department received approximately 730 comments requesting that the department keep the upper concentration limit at 50 pCi/g for incoming loads of TENORM waste at a TENORM waste management system, with most of these comments noting the differences between the department's original notice and rules promulgated by North Dakota. Since publication of the original notice, the department has become aware of neighboring states initiating rulemaking limiting the upper concentration to 50 pCi/g. Having an acceptance limit consistent with neighboring states would discourage Montana from being targeted for disposal of higher concentration waste from those states. Having an upper limit of 50 pCi/g provides consistency in Montana for the acceptance of TENORM waste in the absence of federal requirements regarding the disposal of TENORM.

Because the department is removing the flexibility of the original notice for TENORM waste management systems to be able to accept an occasional higher load up to 200 pCi/g, the department remains concerned with the potential for illegal dumping of TENORM waste that exceeds the acceptance limits of these amended proposed rules. To address this, the department will work with stakeholders and neighboring states to address the issue of illegal dumping and how to ensure that higher concentration loads will be disposed of at proper facilities that are licensed to accept loads higher than 50 pCi/g. The department invites comments on how to address this potential issue.

Proposed Lowered Uniform Gate Screening Exposure Level of 100 μ R/hr: In conjunction with the changes to the waste acceptance limit in (1)(b), the department

is also amending proposed (1)(a) and (2) to establish a uniform gate screening level of 100 $\mu\text{R/hr}$, excluding background, for all incoming loads of TENORM waste, including TENORM surface-contaminated objects. The department had originally proposed a gate screening level of 200 $\mu\text{R/hr}$ for TENORM waste, with a separate 100 $\mu\text{R/hr}$ gate screening level for TENORM surface-contaminated objects. After receiving comments on the original notice and consulting with the department's retained health physicist, the department now believes a single, uniform gate screening level of 100 $\mu\text{R/hr}$, excluding background, is reasonably necessary given the proposed changes in (1)(b).

Under the proposed rules, the owner or operator of a TENORM waste management system may accept an incoming load of TENORM waste only if the load meets both the waste characterization requirements of (1)(b) and the gate screening requirements of (1)(a). The determination as to whether the load meets the 50 pCi/g combined radium limit in (1)(b) is made based upon the waste characterization documentation from a laboratory that the incoming load does not exceed 50 pCi/g. Having a separate gate screening limit would provide an additional level of confidence that the radium concentrations of incoming loads of TENORM waste do not exceed 50 pCi/g. It also provides a method to test TENORM surface-contaminated objects, which cannot be reliably characterized given the nature of that material. Establishing a single gate screening level rather than a level dependent on the type of load would eliminate landfill operator uncertainty, as loads would no longer be subject to separate gate screening levels depending on the type of waste in the load.

As noted in the Tetra Tech Report prepared by the department's retained health physicist ("Development of TENORM Rules for the State of Montana," Tetra Tech, 2016, available at <http://deq.mt.gov/Land/solidwaste> or by contacting the department's Solid Waste Program at (406) 444-5300), the estimated exposure rate from an infinite plane source with Ra-226 and Ra-228 in full equilibrium with their decay products and at relative concentrations of 75 percent and 25 percent would be approximately 2.1 $\mu\text{R/hr}$ per pCi/g. An infinite plane source is a hypothetical scenario used by health physicists to calculate maximum exposure rates. While calculating exposure rates using an infinite plane source sets an outer limit for what the maximum exposure could theoretically be, a TENORM waste management system would not be receiving a flat load of waste that stretched infinitively. With that in mind, at 50 pCi/g, the maximum exposure rate for an infinite plane source with Ra-226 and Ra-228 in full equilibrium would be approximately 110 $\mu\text{R/hr}$. The fraction of equilibrium is a complex function of the time since separation of the radium isotopes. The radium in most loads would not be at equilibrium or from an infinite plane source so the exposure rate would be significantly lower than the maximum exposure rate for an infinite plane source with Ra-226 and Ra-228 in full equilibrium.

The department notes that while the gate screening limit in (1)(a) is useful as an added layer of protection to the public, it should not be used to assess the total annual dose to a landfill worker. The dose depends on the concentration of combined radium accepted by the landfill. The RESRAD dose analysis conducted by the department's consultant and other experts in the field of health physics demonstrated that the combined radium concentration of 50 pCi/g is protective of

members of the public, including the landfill worker, who is at more risk due to spending more time with the waste material and being in closer proximity to the waste.

The proposed gate screening level of 100 $\mu\text{R/hr}$ is comparable to North Dakota's gate screening requirement under North Dakota Admin. Code § 33-20-11-01(2), which sets a maximum exposure level of 100 $\mu\text{R/hr}$ for equipment contaminated with TENORM. In this supplemental notice, the department is proposing not only that TENORM surface contaminated objects be subject to the gate screening level of 100 $\mu\text{R/hr}$, excluding background, but also that all TENORM waste be subject to this upper exposure limit.

Proposed Modifications of Requirements for Filter Media: In conjunction with the other changes to the proposed rules in this supplemental notice, the department is modifying the requirements for filter media, including removing the random sampling of filter media proposed in NEW RULE III(5) and (6) of the original notice. The department notes that, under the proposed rules, random inspections of incoming loads would still be required under NEW RULE VI(1)(n) to protect human health and the environment.

Under the proposed rules, TENORM waste may not be accepted at a TENORM waste management system without concentration results from a laboratory. The concentration results would be verified at the gate prior to disposal, and any results over 50 pCi/g would be refused for disposal. In addition, TENORM waste that exceeds the gate screening limit of 100 $\mu\text{R/hr}$, excluding background, would also be rejected. Given these dual requirements that are more stringent than the original notice, in conjunction with NEW RULE VI(1)(n), additional random sampling of filter media is not reasonably necessary to protect human health and the environment.

Moreover, filter media must comply with more intensive characterization requirements than other types of TENORM waste. See "Requirements for the Characterization of TENORM Wastes," Montana DEQ – Solid Waste Program (revised August 2019). Pursuant to those procedures, filter media must be characterized by collecting and analyzing at least one random composite sample that consists of five representative sub-samples per 20 tons or less for filter media generated from the same source, whereas other TENORM waste must be characterized by collecting and analyzing at least one composite sample that consists of five representative sub-samples per 200 tons or less of TENORM waste material generated from the same source.

Proposed Requirements if the TEDE Boundary Limit Is Exceeded: In response to comments received on the original notice, the department is amending proposed (6) to require that a TENORM waste management system stop accepting TENORM waste in the event the TEDE limit in (1)(c) is exceeded at the boundary. The department is also amending proposed (7)(b) to require that the TENORM waste management system not accept TENORM waste until the exceedance has been remedied. The department is proposing these to be able to ensure that corrective actions can remedy the exceedance and require the TENORM waste management system to follow closure and post-closure plans if necessary to protect human health

and the environment. The department is also proposing specific requirements for how an owner or operator must notify the department of an exceedance of the TEDE limit to provide clarity and avoid confusion.

The department also agrees with public comments that 24 hours is a reasonable timeframe to notify the department by telephone or electronically. The department's previous experience working with waste management systems has demonstrated that 24 hours is enough time for a facility to notify the department. Requiring notice within 24 hours would allow the department to act more quickly on working with the owner or operator of the TENORM waste management system to implement a corrective action plan and follow a closure and post-closure care plan, if necessary to protect human health and the environment.

NEW RULE VI OPERATION AND MAINTENANCE (1) through (1)(k) remain as proposed.

~~(l) procedures developed by a health physicist for monitoring of TENORM concentrations in a TENORM waste unit. The operation and maintenance plan must provide that the concentrations be reported to the department quarterly;~~

(m) through (o) remain as proposed but are renumbered (l) through (n).

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

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

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

(i) through (iii) remain as proposed.

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

(c) through (5) remain as proposed.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: In conjunction with the removal of the 50 pCi/g average concentration limit within a TENORM waste unit, the department is removing the requirement that the operation and maintenance plan include procedures developed by a health physicist for monitoring the average concentration within the unit, as well as the requirement that this information be included in the annual report filed with the department. The procedures contemplated under (1)(l) are not necessary, as waste characterization results would provide documentation that only waste not exceeding 50 pCi/g is placed within a TENORM waste unit. Furthermore, the statement required in (2)(a) as to whether the TENORM waste unit concentration limit has been maintained is no longer necessary because the requirement to maintain an average concentration limit within the TENORM waste unit has been removed. Please see reason statement for amended NEW RULE III.

5. The department is reopening the comment period on the proposed rules only with respect to the specific provisions identified in this Supplemental Notice of

Proposed Adoption. Timely comments previously submitted on the original notice as well as comments received in response to this supplemental notice will be addressed in the adoption notice for the proposed rules. Concerned persons may submit their data, views, or arguments to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., March 2, 2020. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ Edward Hayes

EDWARD HAYES
Rule Reviewer

BY: /s/ Shaun McGrath

SHAUN MCGRATH
Director

Certified to the Secretary of State January 21, 2020.

BEFORE THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.114.503 licensure of)
applicants registered in another state)
and 24.114.1404 landscape architect)
licensure by endorsement)

TO: All Concerned Persons

1. On February 27, 2020, at 9:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Architects and Landscape Architects no later than 5:00 p.m., on February 20, 2020, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdark@mt.gov (board's e-mail).

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

24.114.503 LICENSURE OF APPLICANTS REGISTERED IN ANOTHER STATE (1) Applicants holding a valid licensure license to practice architecture in another state or jurisdiction shall:

(a) ~~submit to the board~~ a completed application, ~~on forms prescribed by the board,~~ including all required fees and documentation; and

(b) present proof the applicant is the holder of an a current NCARB certificate; ~~and~~

~~(c) submit verification of licensure from the licensing entities in all states where the applicant is currently or has ever been licensed.~~

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-304, 37-65-301, MCA

REASON: The board is amending this rule to streamline the architect endorsement application process and align with standardized department licensure procedures. The board is striking (1)(c) to no longer require that applicants for a Montana architect license by endorsement submit verifications from all jurisdictions where

they are or previously were licensed. The NCARB certificate program tracks an individual's licensing history and any incurred discipline, and an NCARB certificate is required for endorsement licensure. The board is amending this rule because recently all jurisdictions began reporting licensure and disciplinary action to NCARB and the board can fully rely on the information.

24.114.1404 LANDSCAPE ARCHITECT LICENSURE BY ENDORSEMENT

~~(1) Applicants for a landscape architect holding a valid license by endorsement must to practice landscape architecture in another state or jurisdiction shall:~~

~~(a) submit an application to the board a completed application including all required fees and documentation; and~~

~~(b) present proof the applicant is the holder of a current CLARB record; or~~

~~(i) provide written verification of licensure from the licensing entities in all jurisdictions where the applicant currently holds a license or has ever been licensed; and The verification must include:~~

~~(a) the date of licensure and the current educational and experience requirements for licensure in the jurisdiction; and~~

~~(b) whether the licensee has pending or completed discipline in any jurisdiction of licensure.~~

~~(2) (ii) Applicants must submit a verification from CLARB record or verification from CLARB as evidence of passing all sections of the LARE.~~

~~(3) The board will evaluate the current licensing requirements of the jurisdiction where the applicant currently holds a license and determine whether the education and experience qualifications for original licensure are substantially equivalent to the Montana qualifications.~~

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-1-304, 37-66-304, MCA

REASON: The board is amending this rule to streamline the endorsement application process for landscape architects holding CLARB records by no longer requiring these applicants to submit verifications from all jurisdictions where they are or previously were licensed if they have CLARB records. The CLARB record program tracks individuals' licensing history and any incurred discipline. Following the amendments, only applicants without CLARB records will be required to provide verification from each jurisdiction to ensure their qualifications.

The board is eliminating the description of the board determination of substantial equivalence as that process is set forth in 37-1-304, MCA, and rules should not unnecessarily duplicate statutory language.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdark@mt.gov, and must be received no later than 5:00 p.m., February 28, 2020.

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

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

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

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.114.503 and 24.114.1404 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; facsimile (406) 841-2305; or to dlibsdark@mt.gov.

9. Grace Berger, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
DALE NELSON, PRESIDENT

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

/s/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 21, 2020.

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I and amendment of ARM) PROPOSED ADOPTION AND
37.107.105, 37.107.117, 37.107.118,) AMENDMENT
37.107.120, 37.107.128, and)
37.107.206 pertaining to Montana)
medical marijuana program)

TO: All Concerned Persons

1. On February 20, 2020, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on February 13, 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.

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

NEW RULE I ADVERTISING (1) Prohibited activities include:

(a) the use of any written or verbal statements, photos, symbols, or depictions of marijuana or marijuana products, on any medium accessible to the general public; or

(b) the use of vocabulary or prices on any medium accessible to the general public that leads a reasonable person to believe that the term or prices used identifies or describes marijuana or marijuana products.

AUTH: 50-46-341, 50-46-344, MCA

IMP: 50-46-341, MCA

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

37.107.105 PROOF OF MONTANA RESIDENCY ~~(1) If an applicant does not have a valid Montana driver license or Montana identification card, the applicant must submit documentation that shows the applicant is a resident of Montana, such~~

~~as a current lease agreement or current utility bill that has the applicant's name and address.~~

(1) An applicant must have a valid Montana driver's license, Montana identification card, or tribal identification card issued by a tribe within the state of Montana, to establish the applicant's identity and Montana residency.

~~(2) remains the same.~~

(3) The department may require additional proof of residency documentation.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, MCA

37.107.117 FEES (1) A cardholder An applicant must submit to the department the following fees with the initial application and renewal application an application fee of \$30.:

~~(a) registered cardholder application fee of \$30;~~

~~(b) provider or marijuana-infused product provider with:~~

~~(i) ten or fewer registered cardholders, an application fee of \$1,000;~~

~~(ii) 11 to 49 registered cardholders, an application fee of \$2,500;~~

~~(iii) 50 or more registered cardholders, an application fee of \$5,000.~~

~~(c) a combined provider and marijuana-infused product provider with more than 10 registered cardholders, an application fee of \$5000;~~

~~(d) dispensary license application fee of \$500;~~

~~(e) chemical manufacturing endorsement application fee of \$500;~~

~~(f) testing laboratory application fee of \$2000;~~

~~(g) marijuana employee permit fee of \$10 for each individual licensee employee listed on application and any subsequent hires; or~~

~~(h) a caretaker relative, caretaker custodial parent, or legal guardian provider fee of \$100.~~

(2) A provider license applicant must submit to the department the following fees with the initial application and renewal application:

(a) the annual fees provided for in 50-46-347, MCA;

(b) marijuana-infused product provider fee of \$500 per registered premises;

(c) chemical manufacturing endorsement fee of \$100; or

(d) custodial parent or legal guardian provider fee of \$100.

(3) A marijuana employee applicant must submit to the department with the initial application and renewal application the annual permit fee of \$10.

(2) (4) All fees must be submitted with the application and must be made payable to the Department of Public Health and Human Services. Cash is not accepted at the Medical Marijuana Program office and must be delivered to the Business and Financial Services Division (BFSD).

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

AUTH: 50-46-344, MCA

IMP: 50-46-344, MCA

37.107.118 MARIJUANA AND MARIJUANA-INFUSED PRODUCTS

PROVIDER LICENSEE REQUIREMENTS (1) A licensee must clearly identify, with conspicuous signage, all limited access areas at a registered premises.

(2) Licensees must ensure that All licensee's employees must wear a department-issued identification badge in a clearly visible manner on the outermost layer of clothing while working on behalf of the licensee.

(3) through (5) remain the same.

(6) ~~A licensee may have up to 30 square feet of canopy space per registered cardholder.~~ The following provisions apply to a licensee's canopy space:

(a) ~~Square footage of canopy space is the total amount of square footage dedicated to live plant production at a registered premise consisting of the area of the floor, platform, or means of support or suspension of the plant and is measured horizontally starting from the outermost point of the furthest mature flowering plant in a designated growing space and continuing around the outside of all mature flowering plants located within the designated growing space.~~ canopy is measured horizontally starting from the outermost point of a plant on the perimeter of a dedicated growing space and continuing around the outside of all plants located within the dedicated growing space;

(b) ~~A a licensee may designate multiple grow cultivation areas at a registered premises but those spaces~~ each cultivation area must be separated by a physical boundary such as an interior wall or by at least eight feet of open space-;

(c) total canopy includes any cultivation sites that are only operational seasonally, such as outdoor cultivation sites during summer months; and

~~(e) (d)~~ A a licensee must not exceed the total canopy allowed by the department for cultivation of marijuana.

(e) Beginning January 1, 2020, the department will convert existing businesses into a canopy license and assign a canopy tier in accordance with 50-46-344(2), MCA.

(f) The department will use the following criteria to assign a canopy tier to each provider:

(i) a provider's cumulative total square feet of cultivation space at all registered cultivation premises calculated by the department at a provider's most recent 2019 inspection; and

(ii) the provider's number of registered cultivation premises as of the most recent 2019 inspection.

(iii) Providers licensed prior to January 1, 2020, without prior canopy measurements will be assigned a tier based on the canopy allowed under previous rules of 30 square feet per registered cardholder who have named them as provider.

(7) A licensee is responsible for the security of all marijuana items on a registered premises, ~~in~~ during transit, and under the supervision of any licensee or licensee employee until the marijuana item is sold.

(8) and (9) remain the same.

(10) ~~A licensee must ensure general sanitary requirements are met on a registered premises to include~~ registered premises must meet minimum sanitary requirements, including:

(a) through (c) remain the same.

(11) A licensee must establish written standard operating procedures to produce marijuana, ~~and maintain them~~ The licensee must maintain those procedures on the registered premises and make them available for department inspection at all times. The standard operating procedures must include:

(a) through (12) remain the same.

(13) A licensee must use a ~~standardized scale~~ licensed weighing device pursuant to 30-12-203, MCA and ARM 24.351.101 whenever marijuana items are:

(a) and (b) remain the same.

(c) weighed for entry into the ~~state inventory~~ seed-to-sale tracking system.

(14) through (16) remain the same.

(17) The licensee must maintain documentation of ~~meeting that demonstrates compliance with~~ all local jurisdiction requirements, including but not limited to ~~such as~~ licensing, fire, health, and safety. The licensee must keep this documentation at the registered premises and make it readily available for department inspection.

(18) A licensee may not:

(a) remains the same.

(b) sell or transfer to a registered cardholder any marijuana item through a drive-up window; or

(c) treat or otherwise alter usable marijuana, consisting of dried leaves and flowers, with the intent of altering the color, appearance, weight, or smell; or

(d) sell more than the daily or monthly purchase limit of usable marijuana to a cardholder.

(19) A licensee may not cultivate hemp or engage in hemp manufacturing at a registered premises.

(20) A licensee may not sell hemp flower as defined by 80-18-101, MCA.

(21) A licensee may only sell hemp cannabidiol (CBD) products sourced from hemp produced and sold through the Montana Department of Agriculture Hemp Program.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-312, 50-46-319, 50-46-326, 50-46-328, 50-46-329, 50-46-330, MCA

37.107.120 MARIJUANA EMPLOYEE PERMIT (1) remains the same.

(2) The marijuana employee permit must always be carried when performing work on behalf of a licensee in a clearly visible manner on the outermost layer of clothing.

~~(3) The department will issue providers two department-issued volunteer badges to be used for no more than 300 hours per volunteer per year.~~

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, MCA

37.107.128 LEGAL PROTECTIONS -- ALLOWABLE AMOUNTS (1) A registered cardholder who has not ~~named a provider~~ elected to obtain marijuana or marijuana-infused products through the system of licensed providers may possess

up to 4 16 ounces of usable marijuana at their registered physical address reported on their registry identification card and 1 usable ounce at any location other than the registered physical address reported on their registry identification card.

(2) A registered cardholder may submit a petition for an increase in the monthly purchase limits defined in 50-46-319, MCA, on a form approved by the department and submitted through the licensing system.

(a) The department may take prior sales history and other factors deemed relevant into account when evaluating a petition for an increase in sales limits.

(b) The department may approve increases to the monthly purchase limits up to a maximum of 8 ounces of usable marijuana or the equivalent in marijuana-infused products as described in (3).

(3) Usable marijuana may be in the form of flower, marijuana-infused products, or concentrates. The following conversion shall be used to determine the allowable amounts of non-flower marijuana:

(a) 1 ounce of marijuana flower is equal to:

(i) 800 mg of marijuana-infused products including edibles; or

(ii) 8 grams or 8 mL of marijuana concentrate.

(b) A registered cardholder may purchase or possess any combination of marijuana flower, marijuana-infused products, and marijuana concentrate if the total calculated conversion is equal to or less than the legal purchase or possession amount.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-312, 50-46-319, 50-46-328, 50-46-329, 50-46-344, MCA

37.107.206 INVENTORY TRACKING AND RECONCILIATION (1) through (8) remain the same.

(9) For each marijuana sale or transfer to a registered cardholder, the following must be recorded in the inventory tracking system at the close of business each day the licensee or licensee employee must:

(a) verify the registered cardholder's eligibility and daily and monthly purchase limits.

(i) A licensee may not complete a sale that exceeds a registered cardholder's daily or monthly purchase limit.

(b) record in the seed-to-sale tracking system at the time of sale or transfer:

(a) (i) the amount the quantity of each item sold or transferred to a registered cardholder;

(b) and (c) remain the same but are renumbered (ii) and (iii).

(10) Licensees must record in the ~~inventory~~ seed-to-sale tracking system:

(a) through (11) remain the same.

(12) All samples taken for quality assurance testing must be recorded in the ~~inventory~~ seed-to-sale tracking system.

(13) Licensed testing laboratories must record all testing results in the ~~inventory~~ seed-to-sale tracking system.

(14) All transport manifests must be generated by the ~~inventory~~ seed-to-sale tracking system and contain all the information required by these rules.

(15) A receiving location must document in the inventory seed-to-sale tracking system any marijuana items received, and any ~~differences~~ discrepancies between the quantity specified in the transport manifest and the quantities received.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, 50-46-319, 50-46-326, 50-46-329, MCA

5. STATEMENT OF REASONABLE NECESSITY

NEW RULE I

This rule is necessary because 50-46-341, MCA instructs the department to clearly identify activities that constitute advertising. This rule fulfills that mandate and provides guidance needed by the industry and the public.

ARM 37.107.105

The proposed amendments to ARM 37.107.105 seek to modify the acceptable forms of identification an applicant can provide to demonstrate Montana residency. The proposed amendment deletes "current lease agreement or current utility bill" as acceptable documentation to establish Montana residency. This is necessary to comply with the specific residency requirements of 50-46-302, MCA, in addition to the more general residency requirements of 1-1-215, MCA. The current rule allows the department to accept documents for proof of Montana residency that do not meet statutory requirements.

The proposed amendment to (1) and proposed addition to (3) are necessary to comply with the law and limit the program to individuals who are Montana residents and not just individuals who own property in Montana and/or who live part-time in Montana but claim residency in another state. This is necessary because 50-46-302, MCA specifically excludes individuals who claim residency in another state (i.e., out-of-state residents attending college in Montana or an absentee property owner paying property tax on property in Montana).

ARM 37.107.117

The proposed amendment to (1) adds "cardholder" to clarify that the rule applies to cardholder applicants and not to provider license applicants.

The proposed addition of a new (2) separates the fee section for provider license applicants. This clarifies to whom the fees apply and amends the fee schedule to reflect the significant licensing fee changes set forth by 50-46-347, MCA. This new section is necessary to update the provider licensee fees pursuant to Senate Bill (SB) 265 and 50-46-347, MCA. Given the new canopy licensing structure and the untethering of cardholders from providers, the current fee schedule is inapplicable.

The proposed addition of new (3) clarifies the rule and simplifies the guidance for employee fees. The proposed amendment of (2), which changes it to (4), provides applicants more specific payment information.

ARM 37.107.118

The proposed amendment to (1) is necessary to clarify department requirements for licensees, resulting in less ambiguity.

The proposed amendment to (6) is necessary to update the department's licensing structure and reflect untethering as set forth by SB 265. Other language amendments serve to clarify language and expectations.

The proposed amendment to (13) provides notice that licensees must use state-regulated scales. This is not clear under current language.

The proposed addition of (18)(d) is necessary to address new statutory limits for cardholder purchases imposed by 50-46-319, MCA.

The proposed additions of (19) and (20) are necessary to address the difficulty in differentiating and therefore regulating hemp and marijuana. This proposed addition provides consistency with Department of Agriculture, Montana State Hemp Program ARM 4.19.109, that prohibits hemp and marijuana from being grown in the same location.

The addition of (21) protects public health and safety by only allowing providers to sell cannabidiol (CBD) products that have passed testing.

ARM 37.107.120

The proposed amendment to (2) gives clear direction. Inspectors have frequently encountered employees at registered premises who do not have their badges easily visible. It is important that employees are immediately identifiable.

The proposed deletion of (3) is intended to amend the rule to comply with statute. The law does not provide for volunteers, and providers have largely failed to accurately account for volunteers and their hours. This proposed change does not require providers to pay an employee, but it does require that all employees, paid or not, comply with the law and department rule.

ARM 37.107.128

The 2019 Montana Legislature enacted SB 265. The proposed amendment implements the significant changes to possession introduced by SB 265, which generally revised the Montana Medical Marijuana Act. The law now limits the amount of marijuana a cardholder may purchase each calendar month to a maximum of 5 ounces.

The new statute, 50-46-319, MCA, allows a cardholder to petition the department for a larger monthly purchase limit. The additional language in (1) fulfills the reference to "amount...allowed by department rule" in 50-46-319, MCA, and sets the amounts of usable marijuana that a cardholder who does not use the network of providers may possess. The addition of (2) sets forth the process for a cardholder to petition for an increase to their monthly purchase limit to comply with the statute.

It is necessary to add (3) because "usable ounce" of marijuana-infused products or extract is not defined by statute. The department looked to a study conducted by the University of Colorado to guide conversion amounts and equivalencies.

ARM 37.107.206

The 2019 Montana Legislature enacted SB 265. The proposed amendment implements the significant changes to possession introduced by SB 265, which generally revised the Montana Medical Marijuana Act. The law now limits the amount of marijuana a cardholder may purchase each calendar month to a maximum of 1 ounce per day and 5 ounces per month. Additionally, the law will allow for the untethering of cardholders from designated providers. The proposed amendment to (9) requires providers to verify cardholder purchase limits and eligibility prior to a sale and requires the immediate recording of sales in the seed-to-sale tracking system. This is intended as a protection to the cardholder and the provider to prevent illegal sales and allow for the implementation of untethering.

Proposed amendment removing "inventory" and replacing with "seed-to-sale" provides consistent language so there is no question that all requirements are for the state seed-to-sale tracking system.

Fiscal Impact

The proposed rule amendments establish a new chemical manufacturer endorsement (CME) fee. Other fees are statutory; SB 265, section 32 imposes a new licensing structure and fee schedule. The described fiscal impact reflects current program participation and anticipated program activity. The proposed new CME fee is \$100. Using the current number of participants with marijuana-infused product provider licenses, the number affected is approximately 197. The revenue generated by this CME fee is \$19,7000 in revenue.

SB 265 also directs the department to establish a marijuana-infused products provider fee. The department has adopted a \$500 marijuana-infused products provider fee per manufacturing registered premises. Using the current number of 197 licensed marijuana-infused products providers, the department anticipates that the revenue generated by the \$500 fee is \$98,500.

The department intends to apply these changes retroactively to January 1, 2020, which is the date that the canopy tier licensing schedule went into effect.

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: 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, and must be received no later than 5:00 p.m., February 28, 2020.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on January 21, 2020.

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

/s/ Bree Gee
Bree Gee
Rule Reviewer

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

Certified to the Secretary of State January 21, 2020.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
2.13.407, pertaining to applicant priority)
and criteria for awarding 9-1-1 grants)

TO: All Concerned Persons

1. On November 22, 2019, the Department of Administration published MAR Notice No. 2-13-593 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2075 of the 2019 Montana Administrative Register, Issue Number 22.

2. The department has amended ARM 2.13.407 as proposed, but with the following changes from the original proposal, new matter underlined:

2.13.407 APPLICANT PRIORITY AND CRITERIA FOR AWARDING GRANTS (1) and (2) remain as proposed.

(3) The 9-1-1 Advisory Council shall provide grant award recommendations to the department utilizing the criteria provided listed in (2). All grant determinations are made in the department's discretion, in consultation with the 9-1-1 Advisory Council, subject to the statutory preference in 10-4-306(3), MCA. A grant award may be made even if the applicant does not meet all of the criteria listed in (2); however, it must be clear from the application that the applicant is requesting funds to support an allowable project or expense identified in 10-4-306(2), MCA.

(4) and (5) remain as proposed.

3. The department received oral testimony and written comments from interested parties. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses follows:

Comment #1: A commenter urged the department to amend ARM 2.13.407 to define "working with" to aid in applying the statutory preference in 10-4-306(3)(a), MCA, to award grants in favor of "private telecommunications providers or by local government entities that host public safety answering points by working with a private telecommunications provider." In the alternative, the commenter suggested the department should amend ARM 2.13.407 to assign a higher priority to grant requests from private telecommunications providers.

Response #1: The commenter's requests are beyond the scope of this rulemaking, which is limited to clarifying criteria for awarding grants. The department will seek the 9-1-1 Advisory Council's input regarding further defining the phrase "working with" in rule. In any event, the department could not assign a higher priority to requests from private providers, because that would negate the mandate in 10-4-306(3)(a), MCA, to give equal preference to "requests by private telecommunications

providers or by local government entities that host public safety answering points by working with a private telecommunications provider." Administrative rules cannot contradict statute.

Comment #2: A commenter noted some of the proposed criteria would not apply to all eligible applicants. The commenter also suggested the proposed amendments should differentiate between applications that do not meet the proposed criteria as the result of choices made by the applicant and applications that could not meet the criteria under any circumstances.

Response #2: The criteria are intended to be flexible as indicated in (3). As demonstrated in the rule text and the statement of reasonable necessity, the department acknowledges the possibility that an application could satisfy the statutory requirements for grant eligibility without meeting all the criteria listed in (2). One reason the criteria should be flexible is to allow grants to be awarded where applications deemed worthy of funding by the 9-1-1 Advisory Council and the department under the statutory eligibility provisions meet some but not all the criteria listed in administrative rule. For example, the department and 9-1-1 Advisory Council should be permitted to make a grant award, notwithstanding the criterion in (2)(d), if the project would address an eligible need identified in 10-4-306(2), MCA, despite the fact that the project or need is ongoing or requires more than two years to complete.

Comment #3: A commenter suggested some of the new criteria proposed in (2) are more likely to apply to local government entities than private telecommunications providers and questioned whether (2)(e) should apply to private providers.

Response #3: The department agrees that some of the criteria may apply more often either to local governments or private providers; however, the criteria needed to be broad enough to apply to either depending on the circumstances. As indicated in the rule text and the statement of reasonable necessity, the department acknowledges the possibility that an application could satisfy the statutory requirements for grant eligibility without meeting all the award criteria listed in (2). For example, the department and 9-1-1 Advisory Council should be permitted to make multiple grant awards to a single applicant, notwithstanding the criteria in (2)(e), if the proposed projects would address eligible needs identified in 10-4-306(2), MCA, despite the fact that each project may require a separate application, resulting in multiple applications being submitted by a single applicant.

Comment #4: A commenter also suggested the proposed criterion in (2)(h) could be beyond the department's rulemaking authority because the statute does not cap grant amounts based on the amount of funds available in the grant cycle.

Response #4: Under 10-4-108(1)(b), MCA, the department has the authority and responsibility to adopt rules regarding criteria for awarding grants. The department believes the criterion in (2)(h) falls within its rulemaking authority. Subsection (2)(h) allows the 9-1-1 Advisory Council and the department to consider whether a

project's anticipated cost is more than 33% of the total amount of grant funding available. The criterion does not prevent the department from awarding funds to an applicant that requests more than 33% of the available funds. The proposed amendment does not contradict statute or prevent the department from awarding grants as envisioned in 10-4-306, MCA. In 10-4-306(1), MCA, the legislature established a competitive grant program. With a competitive grant program, where funding is limited, not all eligible applications will be funded, fully or partially. The 9-1-1 Advisory Council and the department, by necessity, must exercise discretion to award funds on an equitable basis when the amount of funds requested by eligible applicants exceeds the amount of funds available during the grant cycle. Proposed (2)(h) is consistent with the discretion inherently vested in the grantor in a competitive grant program. Nonetheless, with the flexibility afforded by the proposed amendment in (3), if a single application requests funding beyond 33% of available funds and the project is eligible for funding, the department would not be prevented from considering the grant application and could award a grant beyond 33% of available funds if one or more of the other criteria in (2) were met.

Comment #5: A commenter objected to adding the statewide 9-1-1 plan criterion in (2)(i) because the statewide plan, in current form, does not make specific recommendations for procuring a next generation 9-1-1 platform. The commenter expressed concern that absent specific recommendations in the statewide 9-1-1 plan for procuring a next-generation 9-1-1 platform, the state's implementation of a next-generation 9-1-1 platform may be disjointed.

Response #5: The commenter's requests are beyond the scope of this rulemaking, which is limited to clarifying criteria for awarding grants. Because the department did not propose adopting rules regarding the content of the statewide 9-1-1 plan in this rulemaking, the department cannot include them at this time. The department believes support in the statewide 9-1-1 plan is an appropriate consideration, with or without specific recommendations for a next generation 9-1-1 platform. While the plan addresses next-generation 9-1-1 technologies, the plan addresses many other aspects of emergency telecommunications systems in the state. The plan includes an inventory of existing local government public safety answering point (PSAP) capabilities and needs and could be used by the 9-1-1 Advisory Council and department to direct grant funds to areas of greatest need (subject to the statutory requirements and preferences). Regarding next-generation 9-1-1 under 10-4-108(2), MCA, the department is required to adopt rules regarding technology standards to ensure PSAPs meet minimum 9-1-1 service levels and to create baseline next-generation 9-1-1 principles to facilitate deployment of baseline next generation 9-1-1. The standards adopted by the department pursuant to 10-4-108(2), MCA, will be informed by the statewide 9-1-1 plan and should promote an integrated approach to next-generation 9-1-1. The department will adopt such standards in a separate rule proposal. It is not the function of the statewide plan itself to dictate specific components of next generation 9-1-1.

Comment #6: A commenter suggested that funds in the account for distribution to local and tribal government entities provided for in 10-4-304(2)(a), MCA should be

primarily used to fund local governments' "deployment of 9 1 1 systems" and that funds in the grant account provided for in 10-4-304(2)(b), MCA, while available to both local government entities and private telecommunications providers, should be prioritized for providers.

Response #6: This comment is beyond the scope of this proposed rulemaking. Although the department respects the commenter's opinion, the statutes do not specify that funds collected in the account established in 10-4-304(2)(a), MCA are earmarked for deployment of local government 9-1-1 systems. Pursuant to 10-4-107(2)(h), MCA, the department was required to "establish allowable uses of funds by local and tribal governments that host public safety answering points that receive distributions pursuant to 10-4-305." The department has established such allowable uses in rule at ARM 2.13.314 and distributes funds to local governments in accordance with the ARM and the requirements in 10-4-305, MCA.

Regarding the 9-1-1 grant account, the department must make funds available to both local government entities that host a public safety answering point and to private telecommunications providers as provided in 10-4-306(1), MCA. In doing so, the department applies the statutory preference stated in 10-4-306(3), MCA, which gives first priority to "requests by private telecommunications providers or by local government entities that host public safety answering points by working with a private telecommunications provider" and second priority to "requests by local government entities that host public safety answering points."

Comment #7: One commenter noted similarities between the discretionary criterion in ARM 2.13.407(2)(b) and the statutory mandate in 10-4-306(2), MCA. Given the similarity, the commenter sought clarification that an applicant would be required to meet the funding eligibility requirement in 10-4-306(2), MCA, notwithstanding the statement in ARM 2.13.407(3) allowing the department to award a grant "even if the applicant does not meet all of the criteria listed in (2)."

Response #7: The department has added language at the end of (3) to clarify that it must be clear from the application that the applicant is requesting funds to support an allowable project or expense identified in 10-4-306(2), MCA. All applicants must demonstrate their project or expense is eligible for funding under 10-4-306(2), MCA. When making an award, in the context of comparing applications that are eligible under 10-4-306(2), MCA, the department may consider the degree of impact on planning, implementation, operation, or maintenance of 9-1-1 systems, 9-1-1 services, or both as provided in ARM 2.13.407(2)(b).

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 January 21, 2020.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 10.54.1010 pertaining to)
deadlines for applications and annual)
reports)

TO: All Concerned Persons

1. On November 22, 2019, the Board of Public Education (board) published MAR Notice No. 10-54-290 pertaining to the proposed amendment of the above-stated rule at page 2079 of the 2019 Montana Administrative Register, Issue Number 22.

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

3. No comments or testimony were received.

/s/ Pete Donovan
Pete Donovan
Executive Director
Board of Public Education

/s/ Dr. Darlene Schottle
Dr. Darlene Schottle
Chair
Board of Public Education

Certified to the Secretary of State January 21, 2020.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULES I through VIII pertaining to)
Aeronautics Division Aircraft)
Registration)

TO: All Concerned Persons

1. On December 6, 2019, the Department of Transportation published MAR Notice No. 18-179 pertaining to the proposed adoption of the above-stated rules at page 2184 of the 2019 Montana Administrative Register, Issue Number 23.

2. The department has adopted the following rules as proposed: New Rule I (18.12.305), New Rule II (18.12.306), New Rule III (18.12.307), New Rule IV (18.12.308), New Rule VI (18.12.315), New Rule VII (18.12.316), and New Rule VIII (18.12.317).

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

NEW RULE V (18.12.314) FEES (1) The appropriate fee in lieu of tax imposed on aircraft is based on the age and type of aircraft. The 67-3-206, MCA (~~rounded~~) fee schedule is:

(a)

AIRCRAFT TYPE	MANUFACTURE DATE (Years)				
	0-5	6-10	11-20	21-30	31-40
Type 1 – Single Engine, Fixed Gear, 200 HP & under	\$450	\$263 <u>\$262.50</u>	\$150	\$75	\$38 <u>\$37.50</u>
Type 2 – Single Engine, Fixed Gear, Over 200 HP	\$750	\$375	\$225	\$113 <u>\$112.50</u>	\$75
Type 3 – Single Engine, Retractable Gear, 200 HP & under	\$900	\$450	\$263 <u>\$262.50</u>	\$150	\$113 <u>\$112.50</u>
Type 4 – Single Engine, Retractable Gear, Over 200 HP	\$1,050	\$600	\$300	\$188 <u>\$187.50</u>	\$150
Type 5 – Multi-Engine, Piston	\$1,200	\$750	\$375	\$263 <u>\$262.50</u>	\$225
Type 6 – Helicopter, Piston	\$1,050	\$675	\$338 <u>\$337.50</u>	\$225	\$188 <u>\$187.50</u>
Type 7 – Single Engine, Jet/Helicopter,	\$2,250	\$1,050	\$675	\$450	\$263 <u>\$262.50</u>

Prop Jet	
Type 8 – Multi-Engine, Helicopter, Prop Jet	\$3,000 \$1,500 \$900 \$600 \$300
Type 9 – Jet Engine, No Propeller (Fan)	\$4,500 \$2,250 \$1,200 \$750 \$375

(b) remains as proposed.

AUTH: 67-3-101, MCA

IMP: 67-3-206, MCA

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

COMMENT #1

Six comments were received generally opposing a fee increase for aircraft registration due to: financial hardship on private pilots who do not fly for hire; or lack of justification or need for increase due to expenses incurred by the State.

RESPONSE #1:

MDT first notes this proposed rule notice did not impose new fees or increase existing aircraft registration fees. Instead, the 2019 Montana Legislature, through HB 661, made statutory changes—effective July 1, 2019--which increased aircraft registration fees in lieu of taxes found in 67-3-206 MCA. It was therefore necessary for MDT to propose administrative rules which implemented the statutory changes. MDT notes the fee increases were passed by the Montana Legislature, through its public hearing process during the 2019 Legislative Session, and not by MDT through this proposed administrative rulemaking process. Proposed New Rule V (18.12.314) simply duplicates the existing fee table found in statute at 67-3-206, MCA, to allow the public to find the correct fees imposed by the 2019 Montana Legislature in statute as well as administrative rule.

COMMENT #2

One comment was received in support of the increase in registration fees, as the comment stated the money will be staying with MDT's Aeronautics Division.

RESPONSE #2

MDT acknowledges the comment in support of the Legislature's statutory fee increase.

COMMENT #3

One comment was received from MDT staff stating Proposed New Rule V (18.12.314) contains a discrepancy between the statutory fees imposed using partial dollar amounts (e.g., \$262.50) and the rounded dollars amounts (e.g., \$263). Staff

recommends the exact statutory partial dollar amounts be used in proposed New Rule V (18.12.314).

RESPONSE #3

MDT agrees with the comment and will amend proposed New Rule V (18.12.314) as shown above.

COMMENT #4

One comment was received stating New Rule V (18.12.314) should not use the term "Prop Jet," but instead should "harmonize" the rule's definitions with the FAA.

RESPONSE #4

Please see response to Comment #1 above. Proposed New Rule V (18.12.314) is an exact replica of 67-3-206, MCA, which was passed by the 2019 Montana Legislature, and includes the category "Single Engine Jet/Helicopter, prop jet." MDT has repeated the statutory language so the public may more easily find information on aircraft fee categories in both statute and administrative rules but cannot change the statutory language through this rulemaking process.

COMMENT #5

Two comments were received stating opposition to exclusive online registration, as the aircraft owner may not have a computer or internet services.

RESPONSE #5

Proposed New Rule III(2)(e) (18.12.307) on initial aircraft registration states the aircraft owner may either obtain an access code to pay online or elect to have an invoice mailed to the owner to remit payment by check. Similarly, proposed New Rule IV(2) and (4) (18.12.308) on renewals states MDT will send an annual renewal notice via surface mail to the address listed in MDT's records, and payment must be received with a postmark or online time stamp prior to March 1. Both proposed new rules therefore allow notification and payment of fees by either surface mail or online transactions.

COMMENT #6

One comment was received asking how a new resident would know that he must pay a "tax," especially if the aircraft was purchased or owned in another state where there is no "aircraft tax."

RESPONSE #6

MDT first notes there is no "aircraft tax" in Montana, but the Legislature has passed 67-3-206, MCA which imposes a fee in lieu of tax. Existing FAA regulations and proposed New Rule II on aircraft initial registration require civil aircraft brought to Montana to be customarily kept in Montana to register with the FAA showing the owner's Montana address. Proposed New Rule III (18.12.307) states the owner must either: contact MDT to provide necessary information; or MDT will review the FAA registration list monthly for any aircraft newly registered with the FAA with a Montana address to calculate the prorated aircraft registration fee.

COMMENT #7

One comment was received stating many aircraft owners would prefer not to place another sticker on the aircraft. The comment stated a database should be available to MDT to determine registration and ownership information simply by viewing the aircraft's tail number.

RESPONSE #7

Proposed New Rule III(3) (18.12.307) which states that upon fee payment, MDT will mail a decal to the aircraft owner is describing a process which already exists for aircraft registration in Montana and is found in statute at 67-3-204, MCA. The proposed new rule does not create an additional sticker or decal for required posting by the aircraft owner, as this decal system has already been used in Montana for many years.

/s/ Carol Grell Morris

Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley

Michael T. Tooley
Director
Department of Transportation

Certified to the Secretary of State January 21, 2020.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION,
Rule I, the amendment of ARM)	AMENDMENT, AND REPEAL
42.20.675, and the repeal of ARM)	
42.20.660, 42.20.665, 42.20.670, and)	
42.20.680 pertaining to agricultural)	
land valuation)	

TO: All Concerned Persons

1. On December 6, 2019, the Department of Revenue published MAR Notice No. 42-1012 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2207 of the 2019 Montana Administrative Register, Issue Number 23.

2. The department has adopted New Rule I (42.20.676), amended ARM 42.20.675, and repealed ARM 42.20.660, 42.20.665, 42.20.670, and 42.20.680 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 January 21, 2020.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I pertaining to mobile home)
exemption ownership determination)

TO: All Concerned Persons

1. On December 6, 2019, the Department of Revenue published MAR Notice No. 42-1013 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 2214 of the 2019 Montana Administrative Register, Issue Number 23.

2. The department has adopted New Rule I (42.20.174) 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 January 21, 2020.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known
Subject

1. Consult ARM Topical Index.
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2019. This table includes notices in which those rules adopted during the period August 9, 2019, through January 17, 2020, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 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 and 2020 Montana Administrative Registers.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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2-13-585	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, 2338
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

(Public Employees' Retirement Board)

2-43-591 Operation of the Retirement Systems and Plans Administered by the Montana Public Employees' Retirement Board - Allocation of Additional Employer Contributions on Behalf of Montana University System Employees in the Optional Retirement Program, p. 2274

(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

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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

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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, 2339, 41

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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, 2340

- 8-94-176 Administration of the 2021 and 2023 Biennia Treasure State Endowment Program, p. 2182, 42
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- 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
- 8-111-170 Administration of the Coal Trust Multifamily Homes (CTMH) Program, p. 992, 1631
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(Office of Public Instruction)

- 10-1-133 Soliciting Applications for Membership on a Negotiated Rulemaking Committee to Develop and Amend Rules Related to K-12 Content Standards for Computer Science, Library Media, and Technology, p. 1707
- 10-1-134 Soliciting Applications for Membership on a Negotiated Rulemaking Committee to Develop and Amend Rules Related to K-12 Content Standards for Career and Vocational/Technical Education, p. 1710
- 10-1-135 Soliciting Applications for Membership on a Negotiated Rulemaking Committee to Develop and Amend Rules Related to K-12 Content Standards for Social Studies, p. 1713
- 10-16-132 Special Education, p. 165, 790, 1371

(Board of Public Education)

- 10-54-289 Deadlines for Applications and Annual Reports, p. 1716, 2097
- 10-54-290 Deadlines for Applications and Annual Reports, p. 2079
- 10-55-289 Accreditation Process, p. 997, 1742

FISH, WILDLIFE AND PARKS, Department of, Title 12

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- 12-523 Pilot Program for Aquatic Invasive Species in the Flathead Basin, p. 2286
- 12-524 Removing Canyon Ferry Reservoir From the List of Identified Bodies of Water Confirmed or Suspected for Aquatic Invasive Mussels, p. 2288

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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 December 2019 appear. Potential vacancies from February 1, 2020 through April 30, 2020, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of January 1, 2020.

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 DECEMBER 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Hearing Aid Dispensers			
Mr. Eric John Ellingson Great Falls	Governor	McLees	12/6/2019 7/1/2021
Qualifications (if required): Licensed Hearing Aid Dispenser			
Board of Message Therapy			
Dr. Elizabeth C. Cavin Helena	Governor	Kirwin	12/6/2019 5/1/2021
Qualifications (if required): Licensed Health Care Provider			
Board of Sanitarians			
Mr. Clayton Scott Vincent Havre	Governor	Foster	12/27/2019 7/1/2020
Qualifications (if required): Registered Sanitarian			
Family Support Services Advisory Council			
Representative Kathy Kelker Billings	Governor	Price	12/6/2019 4/1/2020
Qualifications (if required): State Legislator			
Governor's Advisory Council on Aging			
Ms. Gayle M. Carlson Missoula	Governor	Taylor	12/6/2019 7/1/2022
Qualifications (if required): Public Representative			

EXECUTIVE BRANCH APPOINTEES FOR DECEMBER 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Ground Water Assessment Steering Committee			
Mr. Walter Sales Jr. Manhattan	Governor	Reappointed	12/6/2019 7/1/2023
Qualifications (if required): Representative of agricultural water users			
State Rehabilitation Council			
Mr. Marvin Weatherwax Sr. Browning	Governor	Dagel	12/6/2019 10/1/2020
Qualifications (if required): Tribal Vocational Rehabilitation Director Representative			
State Workforce Innovation Board			
Mr. Grover Bennett Aldrich Missoula	Governor	Reappointed	12/6/2019 7/1/2020
Qualifications (if required): Business Representative			
Superintendent Elsie Arntzen Helena	Governor	Reappointed	12/6/2019 7/1/2021
Qualifications (if required): Superintendent of Public Instruction or Designee			
Ms. Karen Baumgart Billings	Governor	Reappointed	12/6/2019 7/1/2021
Qualifications (if required): Community Organization Representative			

EXECUTIVE BRANCH APPOINTEES FOR DECEMBER 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Workforce Innovation Board Cont.			
Mr. Dean Bentley Butte	Governor	Reappointed	12/6/2019 7/1/2021
Qualifications (if required): Business Representative			
Mrs. Becky Bey Billings	Governor	Reappointed	12/6/2019 7/1/2021
Qualifications (if required): Business Representative			
Ms. Vicky Rae Byrd Clancy	Governor	Reappointed	12/6/2019 7/1/2020
Qualifications (if required): Workforce Representative			
Mrs. Jeaneen L. Campbell Helena	Governor	Trent	12/6/2019 7/1/2020
Qualifications (if required): Business Representative			
Commissioner Clayton Christian Helena	Governor	Reappointed	12/6/2019 7/1/2021
Qualifications (if required): Commissioner of Higher Education			
Mr. Alan Ekblad Helena	Governor	Reappointed	12/6/2019 7/1/2020
Qualifications (if required): Workforce Representative			

EXECUTIVE BRANCH APPOINTEES FOR DECEMBER 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Workforce Innovation Board Cont.			
Mr. Ken Fichtler Helena Qualifications (if required): Governor or Designee	Governor	Reappointed	12/6/2019 7/1/2021
Director Sheila Hogan Helena Qualifications (if required): DPHHS Director or designee	Governor	Reappointed	12/6/2019 7/1/2020
Commissioner Galen Hollenbaugh Helena Qualifications (if required): Commissioner of Labor and Industry or Designee	Governor	Reappointed	12/6/2019 7/1/2020
Mr. Paul Hopfauf Glendive Qualifications (if required): Business Representative	Governor	Reappointed	12/6/2019 7/1/2021
Mr. Ross R. Lane Bozeman Qualifications (if required): Business Representative	Governor	Poulin	12/6/2019 7/1/2020
Commissioner Michael McGinley Dillon Qualifications (if required): Local Government Elected Official	Governor	Reappointed	12/6/2019 7/1/2020

EXECUTIVE BRANCH APPOINTEES FOR DECEMBER 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Workforce Innovation Board Cont.			
Ms. Rebecca Morgan Missoula Qualifications (if required): Business Representative	Governor	Reappointed	12/6/2019 7/1/2021
Ms. Heather Michelle O'Hara Helena Qualifications (if required): Business Representative	Governor	Blumenthal	12/6/2019 7/1/2021
Director Tara Rice Helena Qualifications (if required): Ex-Officio Member	Governor	None Stated	12/6/2019 7/1/2020
Mr. Loren Rose Seeley Lake Qualifications (if required): Business Representative	Governor	Reappointed	12/6/2019 7/1/2020
Ms. Asta So Missoula Qualifications (if required): Business Representative	Governor	Reappointed	12/6/2019 7/1/2021
Mrs. Kristin Ashley Tessman Helena Qualifications (if required): Workforce Representative	Governor	McCarvel	12/6/2019 7/1/2021

EXECUTIVE BRANCH APPOINTEES FOR DECEMBER 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Statewide Independent Living Council			
Mr. David Wesley Hood	Governor	Underwood	12/1/2019
Butte			12/1/2022
Qualifications (if required): Member At-Large			
Mr. Carlos Alberto Ramalho	Governor	Cleland	12/1/2019
Billings			12/1/2022
Qualifications (if required): Person with a disability and Independent Living Center Representative			
Trauma Care Committee			
Mr. Christopher Benton	Governor	Reappointed	12/27/2019
Red Lodge			11/1/2023
Qualifications (if required): Central Region Trauma Care Advisory Committee			
Ms. Sara Lynn Bonanini	Governor	Reappointed	12/27/2019
Saint Xavier			11/1/2023
Qualifications (if required): Nurse or Physician representing Indian Health Service			
Dr. Chad Engan	Governor	Reappointed	12/27/2019
Great Falls			11/1/2023
Qualifications (if required): Central Regional Trauma Care Advisory Committee			

EXECUTIVE BRANCH APPOINTEES FOR DECEMBER 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Trauma Care Committee Cont.			
Mrs. Lisa Diane Foley	Governor	Miller	12/27/2019
Billings			11/1/2023
Qualifications (if required): Member of the Emergency Nurses Assoc.			
Ms. Joy Fortin	Governor	Reappointed	12/27/2019
Kalispell			11/1/2023
Qualifications (if required): Member of the Montana Trauma Coordinators			
Dr. Whitney Gum	Governor	Reappointed	12/27/2019
Billings			11/1/2023
Qualifications (if required): Member of the American College of Emergency Physicians, Montana Chapter			
Mr. Clinton Loss	Governor	Reappointed	12/27/2019
Helena			11/1/2023
Qualifications (if required): Member of the Montana Emergency Medical Services Association			
Dr. Barry McKenzie	Governor	Reappointed	12/27/2019
Billings			11/1/2023
Qualifications (if required): Presiding Officer			
Dr. Frank Raiser	Governor	Reappointed	12/27/2019
Butte			11/1/2023
Qualifications (if required): Western Region Trauma Care Advisory Committee			

EXECUTIVE BRANCH APPOINTEES FOR DECEMBER 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Trauma Care Committee Cont.			
Mr. Donald Whalen	Governor	Grohs	12/27/2019
Missoula			11/1/2023
Qualifications (if required): Individual who is employed by a Montana private ambulance operator			
Upper Clark Fork River Basin Remediation and Restoration Advisory Council			
Ms. Maureen Connor	Governor	Reappointed	12/6/2019
Philipsburg			9/1/2021
Qualifications (if required): Citizen Voting Member			
Mr. James H. Davison	Governor	Reappointed	12/6/2019
Anaconda			9/1/2021
Qualifications (if required): Citizen Voting Member			
Mr. James J. Kambich	Governor	Reappointed	12/6/2019
Butte			9/1/2021
Qualifications (if required): Citizen voting member			
Ms. Susan Peterson	Governor	Reappointed	12/6/2019
Drummond			9/1/2021
Qualifications (if required): Citizen Voting Member			

EXECUTIVE BRANCH APPOINTEES FOR DECEMBER 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council Cont.			
Mr. Elton Ringsak Butte	Governor	Reappointed	12/6/2019 9/1/2021
Qualifications (if required):	Citizen Voting Member		
Mr. William Rossbach Missoula	Governor	Reappointed	12/6/2019 9/1/2021
Qualifications (if required):	Citizen Voting Member		
Ms. Maggie Schmidt Deer Lodge	Governor	Krutar	12/6/2019 9/1/2021
Qualifications (if required):	Citizen Voting Member		
Director John Tubbs Helena	Governor	Reappointed	12/6/2019 1/1/2021
Qualifications (if required):	Director of the DNRC		
Director Martha Williams Helena	Governor	Reappointed	12/6/2019 1/1/2021
Qualifications (if required):	Director of the Dept. of Fish, Wildlife and Parks		

EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2020 THROUGH APRIL 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Architects and Landscape Architects Mr. Bayliss Ward, Bozeman Qualifications (if required): Licensed Architect	Governor	4/1/2020
Board of Clinical Laboratory Science Practitioners Mr. Troy Krieger, Billings Qualifications (if required): Clinical Laboratory Science Practitioner who holds an active license	Governor	4/1/2020
Board of Optometry Mr. Randall Hoch, Lewistown Qualifications (if required): Registered Optometrist	Governor	4/1/2020
Board of Public Education Mr. Paul Andersen, Bozeman Qualifications (if required): District 1	Governor	2/1/2020
Mr. Scott M. Stearns, Missoula Qualifications (if required): District 1, Democrat	Governor	2/1/2020
Board of Regents Mr. Paul Tuss, Havre Qualifications (if required): District 2 Representative	Governor	2/1/2020
Equal Pay for Equal Work Task Force Director Sheila Hogan, Helena Qualifications (if required): State Agency Director	Governor	4/1/2020

EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2020 THROUGH APRIL 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Equal Pay for Equal Work Task Force Cont.		
Representative Diane Sands, Missoula Qualifications (if required): Elected Official	Governor	4/1/2020
Ms. Carole Lankford, Pablo Qualifications (if required): Tribal	Governor	4/1/2020
Director Pam Haxby-Cote, Helena Qualifications (if required): Co-Chair	Governor	4/1/2020
Mr. Paddy Fleming, Bozeman Qualifications (if required): Business	Governor	4/1/2020
Representative Laura Bishop, Livingston Qualifications (if required): Elected Official	Governor	4/1/2020
Commissioner Galen Hollenbaugh, Helena Qualifications (if required): Co-Chair	Governor	4/1/2020
Ms. Jacquie Helt, Helena Qualifications (if required): Labor/workers	Governor	4/1/2020
President Seth Bodner, Missoula Qualifications (if required): Higher Education	Governor	4/1/2020
Renelle Braaten, Havre Qualifications (if required): Business	Governor	4/1/2020

EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2020 THROUGH APRIL 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Equal Pay for Equal Work Task Force Cont.		
Ms. Jennifer Euell, Florence Qualifications (if required): Non-profit	Governor	4/1/2020
Ms. Aimee Grmoljez, Helena Qualifications (if required): Business	Governor	4/1/2020
Ms. Carol Kruger, Great Falls Qualifications (if required): Business	Governor	4/1/2020
Ms. Tracy McIntyre, Eureka Qualifications (if required): Economic Development	Governor	4/1/2020
Mr. Joseph Purcell, Hardin Qualifications (if required): Business	Governor	4/1/2020
Ms. Melanie Schwarz, Billings Qualifications (if required): Economic Development	Governor	4/1/2020
Mr. Erik Wood, Big Timber Qualifications (if required): Business	Governor	4/1/2020
Director Tara Rice, Helena Qualifications (if required): Co-Chair	Governor	4/1/2020
Dr. Susan Wolff, Great Falls Qualifications (if required): Higher Education	Governor	4/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Family Support Services Advisory Council		
Ms. Danielle McCarthy, Helena Qualifications (if required): Agency Representative OPI	Governor	4/1/2020
Ms. Laura Mckee, Billings Qualifications (if required): Parent Representative	Governor	4/1/2020
Ms. Rebecca Bogden-Richards, Great Falls Qualifications (if required): Public Awareness and Education Organization Representative	Governor	4/1/2020
Ms. Hollin Marie Buck, Missoula Qualifications (if required): Provider of Part C Services	Governor	4/1/2020
Ms. Sarah Odette Goldsmith, Great Falls Qualifications (if required): Parent Representative Region 2	Governor	4/1/2020
Ms. Jean L. Price, Great Falls Qualifications (if required): State Legislator	Governor	4/1/2020
Ms. Melanie Bush, Great Falls Qualifications (if required): Provider of Part C Services	Governor	4/1/2020
Ms. Patricia Butler, Helena Qualifications (if required): Agency Representative	Governor	4/1/2020
Ms. Laura Christiaens, Valier Qualifications (if required): Provider of Part C Services	Governor	4/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Family Support Services Advisory Council Cont.		
Ms. RaLea Harbrige, Belgrade Qualifications (if required): Parent Representative Region 4	Governor	4/1/2020
Mrs. Cathy Jury, St. Ignatius Qualifications (if required): Montana School for the Deaf & Blind	Governor	4/1/2020
Ms. Jeannie Keller, Helena Qualifications (if required): Agency Representative	Governor	4/1/2020
Ms. Erin Kintop, Helena Qualifications (if required): Agency Representative	Governor	4/1/2020
Dr. Christine Lux, Bozeman Qualifications (if required): Personnel Preparation Representative	Governor	4/1/2020
Ms. Alexis Marthaller, Butte Qualifications (if required): Agency Representative	Governor	4/1/2020
Mr. David Munson, Billings Qualifications (if required): Provider of Part C Services	Governor	4/1/2020
Ms. Catherine Murphy, Helena Qualifications (if required): Agency Representative	Governor	4/1/2020
Mrs. Caitlyn Ashley Patera, Helena Qualifications (if required): Agency Representative	Governor	4/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Family Support Services Advisory Council Cont.		
Ms. Girlie Daylinda Quiroz Radley, Helena Qualifications (if required): Speech Language Therapists Assoc.	Governor	4/1/2020
Ms. Kathleen Rich, Helena Qualifications (if required): Head Start Representative	Governor	4/1/2020
Ms. Karen Shevlin, Helena Qualifications (if required): Agency Representative	Governor	4/1/2020
Ms. Karen Thornton, Great Falls Qualifications (if required): Provider of Part C Services	Governor	4/1/2020
Ms. Bonnie Lesley Ramage, Billings Qualifications (if required): Parent Representative	Governor	4/1/2020
Ms. Mauricetta Williams, Great Falls Qualifications (if required): Agency Representative	Governor	4/1/2020
Mrs. Abigail Harris, Forsyth Qualifications (if required): Parent Representative, Region 1	Governor	4/1/2020
Representative Kathy Kelker, Billings Qualifications (if required): State Legislator	Governor	4/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Information Technology Managers Council		
Mr. Jason Emery, Missoula	Governor	4/1/2020
Qualifications (if required): Local Government Representative		
Montana Arts Council		
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		
Montana Small Business Development Center Advisory Council		
Mr. Matt Harrington, Browning	Governor	2/1/2020
Qualifications (if required): Economic Developer		

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Small Business Development Center Advisory Council Cont.		
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
Potato Commodity Advisory Committee		
Mr. Dave Cottom, Dillon Qualifications (if required): Potato Producer	Governor	3/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Potato Commodity Advisory Committee Cont. Mr. William 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
Pulse Crop Commodity Advisory Committee Mr. Paul Kanning, Flaxville Qualifications (if required): Producer	Governor	2/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Pulse Crop Commodity Advisory Committee Cont. Ms. Jullien Street, Chester Qualifications (if required): Producer	Governor	2/1/2020
State Apprenticeship Advisory Council Mr. Dean Bentley, Butte Qualifications (if required): Chair SWIB Member	Governor	3/1/2020
Mr. Barry Reddick, Helena Qualifications (if required): Non-Union Member	Governor	3/1/2020
Mr. Clint Reading, Missoula Qualifications (if required): Public Member	Governor	3/1/2020
Mr. Dale Carpenter, Butte Qualifications (if required): Union Member	Governor	3/1/2020
Mr. Tim Newman, Midvale, UT Qualifications (if required): Union Member	Governor	3/1/2020
Mr. Quinton Queer, Butte Qualifications (if required): Union Member	Governor	3/1/2020
Mr. Jeff Stark, Billings Qualifications (if required): Union Member	Governor	3/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Apprenticeship Advisory Council Cont.		
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
Youth Justice Council		
Sheriff Craig Anderson, Glendive Qualifications (if required): Experience, competence in addressing problems related to school violence, vandalism	Governor	3/1/2020
Commissioner Laura Obert, Townsend Qualifications (if required): Local Government and Board of Crime Control Member	Governor	3/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Youth Justice Council Cont.		
Mr. Randy Shipman, Dillon Qualifications (if required): Public Agency concerned with delinquency prevention or treatment	Governor	3/1/2020
Mr. Dave Bailon, Kalispell Qualifications (if required): Volunteer who works with delinquents or potential delinquents	Governor	3/1/2020
Ms. Geri Small, Lame Deer Qualifications (if required): Experience and competence in addressing problems related to disabilities	Governor	3/1/2020
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. Rae Gyn 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

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Youth Justice Council Cont.		
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
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

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SECRETARY OF STATE

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