

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 2.43.3501 and 2.43.5101	)	AMENDMENT
pertaining to the adoption by)	
reference of the State of Montana	)	NO PUBLIC HEARING
Public Employee Defined	)	CONTEMPLATED
Contribution Plan Document and the)	
State of Montana Public Employee)	
Deferred Compensation (457) Plan)	
Document)	

TO: All Concerned Persons

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

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

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

2.43.3501 ADOPTION OF DEFINED CONTRIBUTION PLAN DOCUMENT AND TRUST AGREEMENT (1) remains the same.

(a) State of Montana Public Employee Defined Contribution Plan Document (January 2018 edition) that was approved by the board on ~~December 14, 2017~~ June 11, 2020, and describes the terms and conditions related to the operation and administration of the plan;

(b) and (2) remain the same.

AUTH: 19-3-2104, MCA

IMP: 19-3-2102, MCA

2.43.5101 ADOPTION OF DEFERRED COMPENSATION PLAN DOCUMENT AND TRUST AGREEMENT (1) remains the same.

(a) State of Montana Public Employee Deferred Compensation Plan Document (January 2018 edition), that was approved by the board on ~~December 14,~~

2017 June 11, 2020, and describes the terms and conditions related to the operation and administration of the plan; and
(b) and (2) remain the same.

AUTH: 19-50-102, MCA

IMP: 19-50-102, MCA

STATEMENT OF REASONABLE NECESSITY: The Public Employees' Retirement Board, as administrator of the Public Employee Retirement System's Defined Contribution Retirement Plan (DCRP) and the State of Montana 457(b) Deferred Compensation Plan, is proposing to revise the DCRP Plan Document and the 457(b) Deferred Compensation Plan Document to update the definition of "Eligible Retirement Plans" and to incorporate recent changes to federal law requirements as provided for in the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).

The SECURE Act increased an individual's required minimum distribution age from age 70 1/2 to age 72. This change in federal law applies to both the Defined Contribution Retirement Plan and the 457(b) Deferred Compensation Plan. As such, Sections 11.01(b), 11.04, and 11.06(c) of the Defined Contribution Retirement Plan Document and Sections 9.01(b), 9.04(b), and 9.06(c) of the 457(b) Deferred Compensation Plan Document are amended to reflect this increase to age 72 for an individual's required minimum distribution age.

Additionally, the SECURE Act created a special rule under IRS Code Section 415(c) for "difficulty of care payments" for defined contribution plans which are otherwise excluded from gross income under IRS Code Section 131. This special rule treats "difficulty of care payments" as compensation for purposes of applying IRS Code Section 415 contribution limits to defined contribution plans. As such, Section 4.02(f) of the Defined Contribution Plan Document, which defines "compensation" for purposes of applying contribution limits under IRS Code Section 415, is amended to include a reference to the entirety of IRS Code Section 414(c), rather than only 415(c)(3), when defining "compensation" to now include "difficulty of care payments" in this definition.

An additional amendment is made to each plan document unrelated to the SECURE Act. Article XIV(b) of the Defined Contribution Plan and Section 13.02(b) of the 457(b) Deferred Compensation Plan which provide for the definition of "Eligible Retirement Plan" for purposes of defining which separate retirement plans qualify for Eligible Rollover Distributions under each plan is amended to now include SIMPLE IRAs as permitted by the IRS.

The revised plan documents were reviewed and approved by the board at its June 11, 2020 board meeting. Because the board determined to adopt the original plan documents by reference, 2-4-307(3), MCA, requires that changes to the documents also be adopted by reference. Therefore, it is necessary to amend the rules that

adopt the plan documents to indicate the version of the plan documents being adopted by reference.

The plan documents are available on the board's web page at mpera.mt.gov.

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

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

6. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1,381 persons based on approximately 4,266 participants in the Defined Contribution Retirement Plan and 9,540 participants in the 457(b) Deferred Compensation Plan as of June 30, 2019, for a total of 13,806 participants.

7. The Public Employees' Retirement Board 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 PER Board.

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 Public Employees' Retirement Board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

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

/s/ Sheena Wilson
Sheena Wilson
President
Public Employees' Retirement Board

Certified to the Secretary of State June 16, 2020.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 2.59.104 pertaining to the) AMENDMENT
semiannual assessment for banks)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On August 8, 2020, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on July 8, 2020, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

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

2.59.104 SEMIANNUAL ASSESSMENT (1) through (3) remain the same.

(4) The fee shall not exceed ~~\$600,000~~ 300,000 for each semiannual assessment ~~the assessment period. For example, if Bank A paid \$375,000 for the first assessment in June, the maximum amount due for the second assessment in December would be \$225,000.~~

(5) remains the same.

AUTH: 32-1-213, 32-1-218, MCA

IMP: 32-1-213, 32-1-218, MCA

STATEMENT OF REASONABLE NECESSITY: On April 24, 2020, the department adopted a temporary emergency rule that waived the first semiannual assessment for banks and supervisory fee for credit unions due to the declared emergency derived from the COVID-19 pandemic. This created a problem for banks, but not credit unions, because different rules apply. The bank waiver only applied to the first semiannual assessment; however, the cap applies to the full-year period which covers both semiannual assessments. The department immediately began receiving questions as to the effect of the annual cap on a semiannual assessment. While the intent of the department was that cap be \$300,000 per semiannual assessment, for a total of \$600,000 per year, the rule did not say that. In order to remove the confusion surrounding the inartfully phrased rule, the department is

amending the rule to convey the department's original intent. The cap is \$300,000 per semiannual assessment. The department anticipates the revenue generated by the assessments will be commensurate with the cost of supervising Montana state-chartered banks.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., July 24, 2020.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., July 8, 2020.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be four persons based on the 39 existing state-chartered banks.

7. An electronic copy of this proposal notice is available through the department's website at <http://doa.mt.gov/administrativerules>. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Heather Hardman, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

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

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

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State June 16, 2020.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 4.9.402 and ARM 4.21.402 and	)	PROPOSED AMENDMENT AND
the adoption of New Rule I and New	)	ADOPTION
Rule II pertaining to Violations in)	
Commodity Reporting)	

TO: All Concerned Persons

1. On July 16, 2020, at 1:00 p.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at Helena, Montana, as well as virtually through the meeting platform Zoom to consider the proposed amendment and adoption of the above-stated rules. For the virtual meeting details, please contact Virginia Corbett by email at agr@mt.gov or by phone at (406) 444-3156.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on July 9, 2020, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts, Helena, Montana, 59601; telephone (406) 444-5402; fax (406) 444-5409; or e-mail agr@mt.gov.

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

4.9.402 REQUIREMENTS FOR REPORTS (1) through (2)(c) remain the same.

(d) Any person failing to produce the past due reports ~~shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$25 \$50 or more than \$500 upon conviction.~~ \$5,000 based upon the amount withheld and the number of refunds attached. See the penalty matrix in [NEW RULE I].

AUTH: 80-11-205, MCA
IMP: 80-11-205, 80-11-207, MCA

REASON: These changes provide that in case of violations of reporting requirements, an increased civil fine option is created in lieu of the current criminal penalty.

4.21.402 REQUIREMENTS FOR REPORTS (1) through (2)(c) remain the same.

(d) Any person failing to produce the past due reports ~~shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$25 \$50 or more than~~

~~\$500 upon conviction.~~ \$5,000 based upon the amount withheld and the number of refunds affected. See the penalty matrix in [NEW RULE II].

AUTH: 80-1-102, 80-11-1003, MCA

IMP: 80-11-1001, 80-11-1002, 80-11-1003, 80-11-1004, 80-11-1005, 80-11-1006, 80-11-1007, 80-11-1008, MCA

REASON: These changes provide that in case of violations of reporting requirements, an increased civil fine option is created in lieu of the current criminal penalty.

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

NEW RULE I PENALTY MATRIX (1) Any person failing to produce past due reports will be subject to a fee based on the following matrix:

Amount withheld	No refunds affected	1-5 refunds affected	Greater than 5 refunds affected
Less than \$1,000	\$50	\$500	\$1,000
\$1,000-\$10,0000	\$500	\$1,000	\$2,500
Greater than \$10,000	\$1,000	\$2,500	\$5,000

AUTH: 80-11-211, MCA

IMP: 80-11-211, MCA

REASON: This new rule outlines the parameters for the civil fine option created by the proposed amendment to ARM 4.9.402 in this notice.

NEW RULE II PENALTY MATRIX (1) Any person failing to produce past due reports will be subject to a fee based on the following matrix:

Amount withheld	No refunds affected	1-5 refunds affected	Greater than 5 refunds affected
Less than \$1,000	\$50	\$500	\$1,000
\$1,000-\$10,0000	\$500	\$1,000	\$2,500
Greater than \$10,000	\$1,000	\$2,500	\$5,000

AUTH: 80-11-1008, MCA

IMP: 80-11-1008, MCA

REASON: This new rule outlines the parameters for the civil fine option created by the proposed amendment to ARM 4.21.402 in this notice.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, 302 N. Roberts, Helena, Montana, 59601; telephone (406) 444-5402; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., July 24, 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 paragraph 5 or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on June 16, 2020.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and adoption 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
Department of Agriculture

Certified to the Secretary of State June 16, 2020.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF EXTENSION OF
Rule I pertaining to MDT Employee) COMMENT PERIOD ON
Grievance Procedures) PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 15, 2020, the Department of Transportation published MAR Notice No. 18-181 pertaining to the proposed adoption of the above-stated rule at page 840 of the 2020 Montana Administrative Register, Issue Number 9.

2. MDT has identified additional interested persons who may wish to comment on Proposed New Rule I and has therefore further disseminated the Proposed Rule Notice for written comment. The department will extend the rule comment deadline so concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the department.

3. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Transportation no later than 5:00 p.m. on July 17, 2020, to advise us of the nature of the accommodation that you need. Please contact Alice Flesch, ADA Coordinator, Department of Transportation, P.O. Box 2001001, Helena, Montana, 59620-1001; telephone (406) 444-9229; fax (406) 444-7685; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail aflesch@mt.gov.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Elisa Schock, Human Resources and Occupational Safety Division, Montana Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6054; fax (406) 444-7685; or e-mail eschock@mt.gov, and must be received no later than 5:00 p.m., July 24, 2020.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State June 16, 2020.

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING
36.11.402 through 36.11.404, 36.11.411,	)	ON PROPOSED AMENDMENT,
36.11.421, 36.11.423, 36.11.425, 36.11.426,	)	AND REPEAL
36.11.427, 36.11.428, 36.11.432, 36.11.436,)	
36.11.444, 36.11.447, and 36.11.450, and the)	
repeal of ARM 36.11.429, 36.11.430,)	
36.11.431, 36.11.433, 36.11.434, 36.11.435,)	
36.11.437 through 36.11.442, and 36.11.451)	
through 36.11.456 regarding the management)	
of state forested trust lands)	

To: All Concerned Persons

1. On July 22, 2020, at 2:00 p.m., the Department of Natural Resources and Conservation (department) will hold a public hearing in the Clark Fork Conference Room, at the department's Forestry Division Headquarters, 2705 Spurgin Road, Missoula, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 20, 2020, to advise us of the nature of the accommodation that you need. Please contact Sierra Farmer, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, Montana 59804; telephone (406) 542-4314; sierrafarmer@mt.gov.

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

36.11.402 GENERAL APPLICABILITY (1) The state forest land management rules in this subchapter shall apply to forest management activities on all ~~forested~~ state trust lands administered by the department.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment serves to clarify that these rules apply to all forest management projects regardless of the land classification.

36.11.403 DEFINITIONS Unless the context otherwise requires, the words defined shall have the following meaning when found in these rules:

(1) "Abandoned road" means a road that is impassable to motorized vehicles and is restricted by a non-passable barrier or vegetation but has drainage structures that have not been removed. An abandoned road will not receive motorized use, including low-intensity forest management activities or commercial forest management activities. ~~permanently closed because it is not intended for use for future forest management activities or motorized vehicles and is left in a condition that provides adequate stability and surface drainage without periodic maintenance.~~

(2) through (9) remain the same.

~~(10) "Bear management unit or BMU" means a geographic analysis area previously designated by an interagency technical committee which is meant to accommodate the year-long habitat needs of both male and female grizzly bears.~~

~~(11) (10) "Best management practices or BMPs" means a practice or set of practices adopted and prescribed by the state of Montana to minimize non-point source water pollution from forest practices, as the most effective and practical means of providing minimum water quality protection for forestry operations.~~

~~(12) "Biological infestation" means any situation where animals, insects, or diseases are present in sufficient amounts to threaten mortality to 25 percent or more of the standing live trees.~~

(12) through (14) remain the same.

~~(15) "Channel migration zone" (CMZ) means the width of a flood prone area at an elevation twice maximum bankfull depth.~~

(15) through (19) remain the same but are renumbered (16) through (20).

~~(20) (21) "Connectivity" means:~~

~~(a) remains the same.~~

~~(b) regarding management of lynx and fisher habitat;~~

~~(i) stand conditions where sapling, pole, mature, or old stands possess at least 40 greater than 39 percent crown canopy closure, in a patch greater than 300 feet wide provide connectivity; and~~

~~(ii) when managing within forest stands associated with riparian and streamside management zones, ARM 36.11.425 shall also be considered to provide habitat connectivity for wildlife, including fisher and Canada lynx.~~

(21) through (23) remain the same but are renumbered (22) through (24).

~~(24) (25) "Desired future condition" means the land or resource conditions that will exist if goals and objectives are fully achieved. It is considered synonymous with appropriate conditions.~~

(25) remains the same but is renumbered 26.

~~(27) "Equipment restriction zone or ERZ" means a discrete management zone where wheeled or tracked equipment is restricted to operational periods such as dry, frozen, or snow-covered conditions to avoid excessive compaction, displacement, or erosion.~~

(26) and (27) remain the same but are renumbered (28) and (29).

~~(30) "Fire or other damage" means damage to the trees by fire or other natural agents that cause the tree to die.~~

(28) remains the same but is renumbered (31).

~~(32) "Forest composition" means the presence and proportionate amounts of tree species occurring within a forest stand.~~

(33) "Forest improvement fees" means fees collected for the forest improvement program.

~~(29)~~ (34) "Forest management activities" means activities or operations normally associated with the management of department-administered forest land including:

(a) through (j) remain the same.

(k) inventory road use;

(l) monitoring; and road reconstruction;

(m) grazing of classified forest lands. installation, removal, maintenance, and replacement of stream structures;

(n) inventory;

(o) monitoring;

(p) fertilization;

(q) gravel quarrying; and

(r) grazing of classified forest lands.

~~(30) "Grizzly BMU subunit" means an administrative area designation related to grizzly bear recovery that approximates the home range size of a female grizzly bear.~~

~~(31) "Habitat type group or HTG" means a collection of land areas potentially capable of producing similar plant communities at climax, generally named for the predicted climax community type.~~

(35) "HCP" means the Montana Department of Natural Resources and Conservation Forested State Trust Lands Habitat Conservation Plan.

(32) through (38) remain the same but are renumbered (36) through (42).

(43) "Low-intensity forest management activities" means non-commercial forest management activities, including:

(a) timber inventory;

(b) timber sale preparation;

(c) road location;

(d) road maintenance;

(e) bridge replacement;

(f) mechanical site preparation;

(g) tree planting;

(h) pre-commercial thinning;

(i) prescriptive and hazard reduction burning;

(j) patrol of fall/winter slash burns;

(k) heavy and non-heavy equipment slash treatments;

(l) monitoring;

(m) data collection; and

(n) noxious weed management.

~~(39) "Lynx denning habitat" means mature forest within lynx habitat with numerous downed logs occurring in at least five-acre patches. Younger successional stages offer denning habitat where CWD amounts are high, such as areas with extensive timber blow down.~~

~~(40)~~ (44) "Lynx habitat" means forest lands ~~comprised~~ consisting of subalpine fir or hemlock habitat types, ~~and where:~~

(a) forest types may be mixed-species composition of:

- (i) subalpine fir;
- (ii) hemlock;
- (iii) Engelmann spruce;
- (iv) Douglas-fir;
- (v) grand fir;
- (vi) western larch;
- (vii) lodgepole pine;
- (viii) hardwoods; and
- (ix) stands dominated by lodgepole pine; or

(b) moist Douglas-fir, grand fir, western red cedar, and Engelmann spruce habitat types ~~where they are intermixed with appreciable amounts of subalpine fir habitat types. Cover types may be mixed species composition (subalpine fir, hemlock, Engelmann spruce, Douglas fir, grand fir, western larch, lodgepole pine and hardwoods), and stands dominated by lodgepole pine.~~

(45) "Lynx management area (LMA)" means delineated areas containing department lands of notable importance for lynx, where records indicate lynx are likely currently or recently present, or are lands considered important for maintenance of resident lynx populations, where increased levels of lynx conservation commitments are applied.

~~(41) "Lynx non-habitat" means:~~

~~(a) definable winter ranges normally used by high concentrations of big game animals and associated predators regardless of habitat type; or~~

~~(b) the following habitat types:~~

- ~~(i) ponderosa pine and dry Douglas-fir;~~
- ~~(ii) limber pine;~~
- ~~(iii) whitebark pine;~~
- ~~(iv) water;~~
- ~~(v) rock; and~~
- ~~(vi) permanent non-forest areas.~~

(46) "Management subzone" means five administratively defined areas approximating the size of a female grizzly bear home range on the Swan River State Forest where commercial activities are allowed during 3-year active windows followed by at least six years' rest on a rotational basis.

~~(42) "Mature foraging habitat (lynx)" means sawtimber stands within lynx habitat that possess moderate or well-stocked coniferous understory vegetation.~~

~~(43) (47) "Mechanized activity" means all activities associated with:~~

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

~~(c) motorized vehicle trips, including snowmobiles, associated with administrative uses;~~

~~(d) through (i) remain the same.~~

(48) "Minimum asking price" means the lowest purchase price per volume of wood the department will accept on a timber sale.

~~(44) remains the same but is renumbered (49).~~

(45) (50) "Motorized trails" means any route longer than 500 feet that does not qualify as a "road," including those routes that conventional four-wheel drive vehicles could negotiate. a trail without restrictions on motorized use and which

legally allows use by motorized vehicles. Trails used by four-wheel-drive vehicles and motorized trail bikes are examples of this type of access route.

(46) remains the same but is renumbered (51).

(52) "Non-recovery occupied habitat (NROH)" means the fixed land area outside the boundaries of established grizzly bear recovery zones where one would reasonably expect to find grizzly bear use occurring during any year/most years, as further clarified in ARM 36.11.432.

(47) remains the same but is renumbered (53).

(48) (54) "Old growth" means forest stands that meet or exceed the minimum criteria for number, size diameter, and age of those large trees, and stand basal area as noted in "Old-Growth Forest Types of the Northern Region" by P. Green, J. Joy, D. Sirucek, W. Hann, A. Zack, and B. Naumann (1992 and subsequent revisions, USFS Northern Region, internal report).

(49) through (52) remain the same but are renumbered (55) through (58).

(53) (59) "Open road" means a road without limitation on motorized vehicle use, but also includes those accessible to the general public during any portion of the grizzly bear non-denning season where visual screening must be retained.
either:

(a) ~~a road or established trail without restriction on motorized vehicle use;~~

(b) ~~a road that would otherwise meet the definition of a restricted road, but that receives ongoing use of, on average, greater than six vehicle passes per week (e.g., for administrative or commercial purposes), termed low-level use; or~~

(c) ~~a road that would otherwise meet the definition of a restricted road, but receives greater than low-level use for greater than 30 days duration.~~

(54) ~~"Open road density" means the percentage of a defined grizzly bear analysis area that exceeds one mile of open road or motorized trail per square mile.~~

(55) remains the same but is renumbered (60).

(56) (61) "Other suitable habitat (lynx)" means forested habitat within lynx habitat with total stocking reflecting at least 40 percent crown closure in any combination of seedling/sapling, pole, or sawtimber size classes as identified in the department stand level inventory database, and also includes stands of saplings that contain at least 180 stems per acre that are greater than or equal to 6 feet tall. forest lands in lynx habitat that do not meet the habitat definitions for denning, mature foraging, young foraging, or temporary non-lynx habitat, but serve to provide cover to facilitate movement and acquisition of alternative prey species, such as red squirrels.

(57) remains the same but is renumbered (62).

(58) (63) "Pileated woodpecker preferred habitat" means live, mature cottonwood stands and mature conifer forests patches greater than 40 acres with overstory canopies dominated by large-sized western larch or ponderosa pine, and containing Douglas-fir, large snags, and CWD.

(64) "Poletimber" means trees with a DBH from 5.0 to 8.99 inches.

(59) through (61) remain the same but are renumbered (65) through (67).

(62) ~~"Rendezvous site" means a gathering site for members of a wolf pack used primarily for pup rearing during the summer and occasionally for security during the fall or early winter.~~

(68) "Reclaimed road" means a road that is impassable to motorized vehicles, but has been stabilized, and drainage features, if present, have been removed. The road prism may remain but is restricted to motorized vehicles by a non-passable barrier or vegetation. A reclaimed road will not receive motorized use, including low-intensity or commercial forest management activities.

(63) (69) "Restricted road" means a road that is managed to limit motorized vehicle use seasonally or yearlong, and shall typically have:

(a) a physical barrier, which may be man-made or naturally occurring and include, but are not limited to:

(i) gates;

(ii) barricades;

(iii) earthen berms;

(iv) vegetation;

(v) rocks; or

(b) access controlled by another landowner(s) in a manner that, at a minimum, restricts the use of motorized vehicles by the general public. (in areas other than grizzly security core) means a road on which motorized vehicle use shall be restricted seasonally or yearlong.

~~(a) Such roads require physical obstruction, generally a gate, and motorized vehicle use is legally restricted.~~

~~(b) Low-level motorized administrative use by personnel of resource management agencies, their contractors, and their permittees shall be acceptable. Low levels are defined as:~~

~~(i) ongoing use of, on average, less than seven vehicle passes per week; or~~

~~(ii) use greater than six vehicle passes per week, but for a duration of less than 31 days.~~

~~(c) The following uses shall be allowed on restricted roads, and shall not be considered in calculation of use level:~~

~~(i) fire suppression;~~

~~(ii) unforeseen events involving human safety;~~

~~(iii) activities potentially beneficial to bears of duration less than two weeks that include monitoring, tree planting and prescribed burning.~~

~~(64) and (65) remain the same but are renumbered (70) and (71).~~

(66) (72) "Road closure" means gates, berms, debris, or other facilities necessary to close existing roads to motorized public use and/or administrative uses. Road closure types are classified as:

(a) Class A road closures can be easily opened and made passable for periodic administrative or seasonal public use;

(b) Class B road closures are not easily passable as they are intended to effectively restrict public and periodic administrative motorized use by the department for extended periods of time, and can typically be removed with the aid of heavy equipment to allow access for future management or emergencies such as wildland fire;

(c) Class P road closures are associated with private lands where access to a department parcel(s) is restricted by a neighboring private landowner(s), and are assumed to be restricted to public, commercial, or agency use unless use levels are specifically known.

(67) remains the same but is renumbered (73).

~~(68) "Road in security core areas" (grizzly bear) means roads within security core areas that have permanent closure devices (unless the security core designation is removed).~~

~~(a) Examples of such closure devices shall include but are not limited to:~~

~~(i) tank traps;~~

~~(ii) large boulders; and~~

~~(iii) dense vegetation.~~

(69) and (70) remain the same but are renumbered (74) and (75).

(76) "Sale-scoping announcement" means the initial public notification of the department's intent to develop a timber sale.

(74) (77) "Salvage" means the removal of dead trees or trees being damaged or killed by injurious agents other than competition, such as fire, insects, disease, or blowdown, to recover the economic value that would be otherwise lost.

(72) and (73) remain the same but are renumbered (78) and (79).

~~(74) "Seasonally secure area" means an area of high seasonal habitat quality that is seasonally secure from:~~

~~(a) motorized access and high non-motorized use; and~~

~~(b) approximates in size that portion of a female grizzly bear's home range where a concentration of use is expected to occur.~~

~~(75) "Security core areas" means areas typically greater than 2500 acres that during the non-denning period:~~

~~(a) are free of motorized access;~~

~~(b) consider the geographic distribution of seasonal habitats important to grizzly bears;~~

~~(c) remain in place for long periods, preferably ten years; and~~

~~(d) are at least 0.3 mile from the nearest access route that can be used by a motorized vehicle.~~

(80) "Security zone" means seven administratively defined areas comprising 22,007 acres on the Stillwater block where, to provide security for grizzly bears during the annual non-denning season of April 1 to November 15, the following is prohibited:

(a) motorized administrative use;

(b) motorized public use; and

(c) construction of additional permanent roads.

(76) through (83) remain the same but are renumbered (81) through (88).

(89) "Spring habitat" (grizzly bear) means:

(a) areas associated with roads possessing restricted status during the spring period on the Stillwater block;

(b) all habitat below 5,200 feet elevation in the Swan River State Forest; and

(c) all habitat below 4,900 feet elevation on scattered parcels within grizzly bear non-recovery occupied habitat and recovery zones.

(90) "Spring period" (grizzly bear) means:

(a) April 1 through June 15 for non-spring habitat and April 1 through June 30 for areas within spring habitat for the Stillwater block;

(b) April 1 through June 15 for lands within the Swan River State Forest and scattered parcels in recovery zones and NROH.

(91) "Stand structure" means the vertical distribution of forest components which include tree height and crown layers of a forest stand.

(92) "Stillwater Block" means the blocked portions of the Stillwater and Coal Creek State Forests.

(84) and (85) remain the same but are renumbered (93) and (94)

(95) "Suitable lynx habitat" means forest stands within habitat types considered to be preferred by lynx that possess a total stocking level reflecting at least 40 percent crown closure in any combination of various stand size classes and combinations as defined by the department's lynx habitat map classifications and descriptions, which include the subsets of summer foraging habitat, winter foraging habitat, and other suitable habitat categories.

(96) "Summer foraging habitat" means dense sapling stands and moderately to densely stocked poletimber stands within suitable lynx habitat that possess abundant horizontal cover.

(86) "Temporary non-lynx habitat" means:

(a) seedling stands;

(b) sapling to old age class stands with less than 40 percent canopy closure;

(c) non-stocked clearcuts; and

(d) stand-replacement burns which are likely to develop future habitat characteristics through forest succession that are important to lynx.

(97) "Temporary non-suitable lynx habitat" means recently harvested or naturally disturbed (e.g., burned) areas that have fewer than 180 saplings per acre at least 6-feet tall, or less than 40 percent total stand canopy cover, but have the potential to be suitable lynx habitat over time.

(98) "Temporary road" means a road built using the minimum standard necessary for the anticipated use, and which is reclaimed following use. Drainage structure(s) must be removed at the end of the temporary use period. Applicable BMPs will be implemented on these roads.

(87) through (90) remain the same but are renumbered (99) through (102).

(94) (103) "Visual screening (grizzly bear)" means vegetation and/or topography capable of hiding a grizzly bear from view, providing visual obstruction that makes it difficult to see into adjacent areas from the roadbed. The distance required to provide visual screening, typically 100 feet, is dependent upon the type and density of cover available.

(92) through (95) remain the same but are renumbered (104) through (107).

(108) "Wind throw" means trees blown to the ground by wind.

(109) "Winter foraging habitat" means sawtimber stands within lynx habitat that possess multi-layering of moderate or well stocked coniferous vegetation and horizontal cover, and must:

(a) occur on habitat types preferred by lynx;

(b) have one or more of the following species present:

(i) subalpine fir;

(ii) grand fir; or

(iii) Engelmann spruce; and

(c) have at least ten percent canopy closure in trees greater than or equal to nine inches DBH; and

(d) have a minimum of 40 percent total stand crown density in understory and overstory combined.

~~(96) "Young foraging habitat" (lynx) means conifer seedling and sapling stands within lynx habitat with average height greater than or equal to six feet and density greater than or equal to 4,000 stems per acre.~~

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendments serve to eliminate outdated, redundant, and unnecessary definitions and provide consistency, simplicity, better organization, and ease of use.

36.11.404 BIODIVERSITY - COARSE FILTER APPROACH (1) through (1)(d) remain the same.

~~(e) unique characteristics:~~ unique and rare habitats.

(2) remains the same.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment provides clarification and language consistent with the HCP regarding the coarse filter approach.

36.11.411 BIODIVERSITY - SNAGS AND SNAG RECRUITS (1) remains the same.

~~(a) On the warm and moist HTG and the wet HTG, the~~ on all habitat type groups, the department shall retain an average of approximately two snags and two snag recruits over 21 inches DBH, per acre;

~~(b) On all other HTG, the department shall retain an average of approximately one snag and one snag recruit over 21 inches DBH, per acre.~~

~~(c) (b)~~ In all cases, if snags or recruits over 21 inches DBH are not present, the next largest size snag or recruit shall be retained;

~~(d) (c)~~ Retained snags and recruits may be evenly distributed or clumped;

~~(e) (d)~~ If there is an absence of sufficient snags or recruits, some substitution between the two may occur;

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

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment provides easier implementation for field practitioners and consistent resource protection regardless of habitat type groups.

36.11.421 ROAD MANAGEMENT (1) through (8) remain the same.

(9) The department shall determine which roads to ~~close~~ restrict, abandon, or ~~obliterate~~ reclaim during project level analysis.

(10) The department shall consider restricting closure or reclaiming ~~abandonment~~ of roads accessible to motorized vehicles:

(a) and (b) remain the same.

~~(i) In the Swan River state forest, the department shall plan road closures in accordance with the terms of the Swan Valley Grizzly Bear Conservation Agreement, dated February 23, 1995.~~

(11) The department shall consider for reclamation ~~abandonment~~ roads that are deemed non-essential. The department shall leave reclaimed ~~abandoned~~ roads in a condition that provides adequate drainage and stabilization, while leaving intact the road prism and capital investment needed to construct that road.

(12) The department shall assess road maintenance needs by inspecting conditions on both open and restricted ~~closed~~ roads ~~every five years~~. The department shall then prioritize maintenance operations considering the results of the inspections and the resource value in the watershed as determined by the department.

(13) remains the same.

(14) The department shall inspect road closure structures, such as gates and earth berms, as part of ongoing administrative duties and in response to notice of ineffective road closures received from the public. The department shall repair or modify ineffective closures or consider alternative methods of closure. ~~Inspections would occur at least every five years.~~ Repairs would be a high priority when allocating time and budget.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment removes references to the Swan Valley Grizzly Bear Conservation Agreement which is no longer applicable due to termination of the agreement in August 2018. Additionally, the proposed amendment updates language clarifying restricted and reclaimed roads to provide implementation consistency and clarification for field practitioners, as well as revising department language regarding road inventory for consistency with the HCP.

36.11.423 WATERSHED MANAGEMENT - CUMULATIVE EFFECTS

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

(b) The department shall complete a coarse filter screening on all the following projects; ~~involving substantial vegetation removal or ground disturbance. Except for small scale projects with very low potential for impacts, additional analysis shall be required.~~

(i) upland timber harvest and salvage harvest of more than 15 acres or 50 mbf;

(ii) RMZ harvest of green timber;

(iii) salvage harvest within the RMZ of one or more acres of dead and dying timber;

(iv) new road construction greater than 0.5 miles;

(v) new road construction located within an RMZ; or

(vi) construction of any length of new road that includes the installation of new Class 1 stream crossings.

(c) through (2) remain the same.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment provides specific detail identifying when coarse filter screening for cumulative watershed effects is required to be completed, as well as capturing language in the HCP and applies those specifications to lands not covered under the HCP. Implementation of these amendments will increase the consistency of effects analyses across forest management projects on lands outside the HCP project area.

36.11.425 WATERSHED MANAGEMENT - STREAMSIDE MANAGEMENT ZONES, EQUIPMENT RESTRICTION ZONES, AND RIPARIAN MANAGEMENT ZONES (1) The department shall establish ~~a riparian management zone (RMZ)~~ an equipment restriction zone (ERZ) adjacent to the minimum width of the SMZ required under ARM 36.11.302 when forest management activities are proposed on sites with high erosion risk ~~or on sites that are adjacent to fish bearing streams or lakes.~~

(2) and (3) remain the same.

(a) the department shall establish an ~~RMZ with~~ ERZ that when combined with the SMZ has a minimum of 100 feet when activities are located on slopes greater than 25 percent but less than 35 percent;

(b) the department shall establish an ~~RMZ with~~ ERZ that when combined with the SMZ has a minimum of 150 feet when activities are located on slopes greater ~~than~~ or equal to 35 percent, but less than 50 percent;

(c) the department shall establish an ~~RMZ with~~ ERZ that when combined with the SMZ has a minimum of 200 feet when forest management activities are located on slopes greater ~~than~~ or equal to 50 percent; and

(d) the department may modify and shorten ~~RMZ~~ ERZ widths established for high erosion risk when topographic breaks, existing roads or other factors are present that reduce erosion risk and provide suitable sediment delivery filtration. Modified or shortened ~~RMZs~~ ERZs must still meet the minimum width of the SMZ required under ARM 36.11.302 and riparian management zone (RMZ) required under ARM 36.11.425.

(4) The following restrictions apply to forest management activities conducted within an ~~RMZ~~ ERZ established for high erosion risk:

(a) The department shall limit new road construction within an ~~RMZ~~ ERZ to situations in which:

(i) through (iii) remain the same.

(b) The department shall restrict ground-based equipment operations within the ~~RMZ~~ ERZ.

(i) The department shall not allow the operation of wheeled or tracked equipment within an ~~RMZ~~ ERZ when it is located on slopes greater than 35 percent;

(ii) The department shall not allow the operation of wheeled or tracked equipment within an ~~RMZ~~ ERZ when it is located on slopes less than 35 percent, unless the operation can be conducted without causing excessive compaction, displacement, or erosion of the soil;

(iii) The department may allow the use of wheeled or tracked equipment inside of that portion of an SMZ or ~~RMZ~~ ERZ when operated from an established road on the side of the road away from the stream pursuant to ARM 36.11.304.

(c) The department shall restrict cable yarding of logs within and across an ~~RMZ~~ ERZ to cable systems and operations that do not cause excessive ground disturbance within the SMZ or ~~RMZ~~ ERZ.

(5) ~~The department shall design harvest prescriptions conducted in SMZs and RMZs located adjacent to fish bearing streams to retain adequate levels of shade and potential large woody debris recruitment to the stream channel by~~ The department shall establish an RMZ when timber harvests are proposed adjacent to all class 1 streams or lakes, which will:

(a) ~~establishing an RMZ that when combined with the SMZ has a minimum slope distance equal to the site potential tree height of the proposed harvest stand at age 100 years~~ have a minimum width equal to the 100-year site index tree height, or 80 feet, whichever is greater;

(b) ~~determining site potential tree height from site index curves developed for local or regional forest types~~ determine the 100-year site index tree height at the project level by field sampling the age and height of several site trees within the riparian stand and comparing those values to locally or regionally develop site index curves;

(c) ~~determining site index of a stand by measuring tree height and age directly from suitable index trees located at the approximate minimum SMZ width.~~ maintain a 50-foot wide no-harvest buffer within class 1 RMZs, which:

(i) will start at the ordinary high-water mark and extend across the RMZ to a slope distance of 50 feet when measured perpendicular to the stream or lake; but

(ii) within the 50-foot wide no-harvest buffer, it may be necessary to allow corridors associated with cable logging systems to fully suspend logs across streams; and

(iii) in these situations, the minimum corridor spacing will be 150 feet with no more than 15 percent of the 50-foot wide no-harvest buffer affected;

(d) retain shrubs and sub-merchantable trees to the fullest extent practicable, and a minimum of 50 percent of the trees greater than or equal to 8 inches DBH for harvest within the remainder of the RMZ;

(e) specify that multiple harvest entries into a specific RMZ stand will only occur if:

(i) the existing RMZ stand is classified as a medium to well-stocked, poletimber or saw timber size class; and

(ii) the proposed harvest meeting the minimum retention tree requirements in ARM 36.11.305; and

(f) extend SMZs to include adjacent wetlands, where the normal SMZ boundary intercepts a wetland. Retention tree requirements are the same as the requirements for the first 50 feet of SMZ.

~~(6) The department shall determine adequate levels of shade retention on a project level basis.~~

~~(a) Adequate levels are those levels that maintain natural water temperature ranges. The department will extend RMZs in situations where channel migration is likely to influence riparian functions that are potentially affected by timber harvests by:~~

(a) establishing a Type 1 Channel Migration Zone (CMZ) within the flood prone area of meandering valley bottom streams that are actively eroding and depositing sediment through lateral migration of the stream channel, where:

(i) the portion of RMZ restricted to 50 percent retention on a Type 1 CMZ is extended to incorporate the entire flood prone area;

(ii) the standard RMZ harvest restrictions will be applied in the event that the width of the flood prone area does not extend beyond the normal RMZ;

(iii) the 50-foot no-harvest buffer will not be extended on a Type 1 CMZ;

(b) establishing a Type 2 CMZ within the flood prone area of unstable streams exhibiting sudden erosion and deposition processes, where:

(i) on a Type 2 CMZ the normal 50-foot RMZ no-harvest buffer is extended to include the entire flood prone area plus an additional 50 feet within the RMZ;

(ii) no timber harvest will occur within the entire flood prone width;

(iii) the delineation of the normal RMZ, including the additional 50 foot no-harvest buffer, will begin at the edge of the flood prone width; and

(iv) examples of sudden erosion and deposition process are:

(A) moderately contained stream channels with evidence of recent sediment deposition in the flood prone area;

(B) alluvial fans; and

(C) debris flows or torrents.

~~(7) The department shall determine adequate levels of large woody debris retention on a project level basis.~~

~~(a) Adequate levels are those levels that maintain stream channel form and function.~~

~~(8) remains the same but is renumbered (7).~~

~~(9) Timber harvests within the SMZ and RMZ of a stream, lake, or other body of water supporting bull trout or any other fish or aquatic species listed under the Endangered Species Act, 16 U.S.C Sections 1531 through 1544, the department shall act pursuant to ARM 36.11.427.~~

(8) Allowances for harvest within the no-harvest portion of class 1 RMZs shall include:

(a) potential harvest of diseased and insect-infested trees when an RMZ is being impacted by disease or insect infestations; where:

(i) such harvest must still meet the minimum retention tree requirements of ARM 36.11.305(2);

(ii) retained trees will include all streambank and downed trees lying within the stream channel or embedded in the stream bank;

(b) harvest of diseased and insect infested trees from the remaining RMZ, outside of the first 50 feet, may exceed those levels necessary to meet the normal 50 percent retention requirement;

(c) the salvage harvest of dead or downed trees which may exceed the normal 50 percent retention requirement in that portion of the RMZ outside of the 50-foot no-harvest buffer in areas within an RMZ that have been subjected to windthrow and/or severe or stand-replacement fires, but:

(i) such harvest must still meet the minimum retention tree requirement of the SMZ Law;

(ii) no salvage harvest of fire-killed trees will occur within the 50-foot no-harvest buffer;

(iii) downed trees lying within the stream channel or embedded in the stream bank will be managed pursuant to ARM 36.11.305(4)(d);

(d) necessary management of a portion of the total Class 1 RMZ acres of forested trust lands using harvest prescriptions designed to meet the minimum retention tree requirements under ARM 36.11.305 (SMZ Law), where:

(i) the RMZ stands target to be managed in this manner will be those stand types where shade-tolerant species exists, and regeneration or maintenance of shade-intolerant tree species is necessary to achieve or maintain desired future stand types or provide long-term riparian functions;

(ii) a 50-foot wide no-harvest buffer will not be required in these situations;
and

(iii) tree retention will be based on the number of trees within the first 50 feet of RMZ on both sides of a stream. Where 50 percent of the trees greater than or equal to 8 inches DBH, or 10 trees per 100-foot segment of stream, whichever is greater, will be retained on each side of the stream.

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

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment allows for consistent, statewide implementation of riparian timber harvest strategies adopted in the HCP.

36.11.426 WATERSHED MANAGEMENT - WETLAND MANAGEMENT ZONES (1) The department shall establish a wetland management zone (WMZ) when forest management activities are proposed within or adjacent to an isolated wetland or adjacent to a wetland found within an SMZ.

(a) through (6) remain the same.

(7) The department shall design harvest prescriptions in a WMZ to protect and retain shrubs and sub-merchantable trees to the fullest extent practicable.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendments define a previously undefined acronym and reflect language in the SMZ Law.

36.11.427 FISHERIES (1) The department shall minimize impacts to fish populations and habitat by implementing the watershed, SMZ, RMZ, and WMZ rules contained in ARM 36.11.422 through 36.11.426.

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

(i) The department shall design forest management activities to protect bull trout, habitat by implementing conservation strategies pursuant to ~~The Restoration Plan for Bull Trout in the Clark Fork River Basin and Kootenai River Basin, Montana (June 2000)~~ the Bull Trout Recovery Plan (2015), where applicable.

(3) The department shall design forest management activities to protect bull trout, westslope cutthroat trout, and Columbia redband trout habitat by implementing the HCP.

~~(3)~~ (4) As designated by the department, pursuant to ARM 36.11.436 the department shall:

(a) design forest management activities to protect and maintain:

~~(i) westslope cutthroat trout;~~

(ii) through (iv) remain the same but are renumbered (i) through (iii).

(b) and (c) remain the same.

(i) westslope cutthroat and Yellowstone cutthroat trout;

~~(ii) yellowstone cutthroat trout;~~

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

~~(4)~~ (5) When installing new stream crossing structures on fish-bearing streams, 83-5-501, MCA, the Stream Protection Act (124 permits) specifies:

(a) the department shall provide for fish passage as specified in 83-5-501, MCA, the Stream Protection Act (124 permits): by emulating streambed form and function; but

(b) stream crossing providing connectivity to limited or marginal fisheries habitat may not be required to emulate streambed form and function, if otherwise approved under the Stream Protection Act (124 permits).

(6) The department will inventory and assess all stream crossings on known and presumed fish habitat for connectivity on classified forest lands and within the HCP project area; and

(a) the department will prioritize stream crossing improvement based on existing levels of connectivity, species status, and population biological goals while taking into consideration other regulatory agencies or cooperative organization activities and goals.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment updates the reference to the Bull Trout Recovery Plan (2015), which replaced the Restoration Plan for Bull Trout in the Clark Fork and Kootenai River Basin, Montana. The proposed amendment also provides additional protections for HCP-covered species

across non-HCP covered lands to provide more consistent implementation direction to field practitioners. Revised language identifies species that will be afforded protections for non-HCP covered species and species currently covered under state or federal management plans including: the Memorandum of Understanding and Conservation Agreement for Westslope cutthroat trout and Yellowstone cutthroat trout in Montana (2007), and the Candidate Conservation Agreement with Assurances for Fluvial Arctic Grayling in the Upper Big Hole River (2006), on which the department are cooperators. Additional revisions provide the department consistent direction to fisheries management as outlined in the HCP.

36.11.428 THREATENED AND ENDANGERED SPECIES (1) The department shall participate in recovery efforts of threatened and endangered plant and animal species as listed below. The department shall confer in its sole discretion with the United States Fish and Wildlife Service (USFWS) to develop habitat mitigation measures.

(a) through (2) remain the same.

(3) The department staff shall report sightings of threatened and endangered species, ~~except bald eagles~~, to respective working groups or an appropriate data repository.

~~(a) For bald eagles, only new nest locations shall be reported.~~

(4) With respect to Canada lynx, the department will:

(a) establish and maintain a lynx habitat map utilizing science-based habitat classifications, which may be revised and/or replaced based on improved scientific information upon approval of the forest management bureau chief, including:

(i) summer foraging habitat;

(ii) winter foraging habitat;

(iii) other suitable habitat;

(iv) temporary non-suitable habitat; and

(v) total potential habitat;

(b) commit to the following project-level measures in mapped lynx habitat to provide downed woody structure for lynx escape cover, habitat for prey species, and structure that may provide some potential den sites in the future by:

(i) providing for retention of coarse woody debris using applicable scientific publications;

(ii) emphasizing the retention of downed logs of 15-inch diameter or larger where they occur, and managing to retain at least one large log per acre that is at least 20 feet long; however

(iii) retention of coarse woody debris may be superseded in special management situations where other goals must be considered such as:

(A) fuels management and aesthetic considerations in the urban interface;

(B) projects near recreational areas, where downed wood is collected and burned;

(C) harvest units adjacent to open roads;

(D) broadcast burning; and

(E) meeting mandated hazard reduction requirements; but

(iv) ensuring adequate recruitment for Canada lynx, by retaining an average of two snags and two live snag recruitment trees of greater than 21 inches diameter at breast height (DBH) per acre in stands identified as lynx habitat;

(A) if snags or snag recruitment trees of greater than 21 inches DBH are not present, then the largest snags or snag recruitment trees available will be retained;

(B) snags may be evenly distributed or clumped, but if there is an absence of sufficient snags or recruits, some substitution between the two may occur;

(v) leaving one percent of the definable blowdown area unsalvaged on blowdown salvage projects involving flattened patches, where the material will be retained in a nonlinear patch or patches to the extent practicable;

(c) prohibit motorized forest management activities and prescribed burning associated with forest management activities within 0.25 mile of known active lynx den sites from May 1 through July 15;

(d) proceed with suspended activities if a department biologist has confirmed that lynx have vacated the den site vicinity prior to July 15;

(e) retain small, shade-tolerant trees including grand fir, subalpine fir, and Engelmann spruce in thinned portions of pre-commercial thinning units within mapped lynx habitat that do not pose substantial competition risks to desired crop trees;

(f) retain patches of advanced regeneration of grand fir, subalpine fir, and Engelmann spruce as a component of commercial harvest prescriptions in winter foraging habitat, where canopy cover of retained patches would typically not exceed ten percent of the stand area through implementation of this measure;

(g) design harvest units to maintain a connected network of suitable lynx habitat along RMZs, ridge tops, and saddles on timber sale projects;

(h) document in MEPA analysis the circumstances where maintaining habitat connectivity and travel corridors along ridge tops and saddles are impracticable, which may include:

(i) non-forested ridges;

(ii) non-forested saddles;

(iii) harvest units where cable systems are used;

(iv) locations where habitat associated with scattered parcels is isolated by management on surrounding ownerships;

(v) locations where lynx habitat polygons are isolated within a parcel;

(vi) locations where forest types not preferred by lynx bisect lynx habitat;

(vii) locations where silvicultural, fiduciary, or access objectives cannot be met;

(viii) lodgepole pine stands requiring stand-replacement harvest; and

(ix) retaining trees on sites with high potential for blowdown;

(i) implement the following on total potential lynx habitat on scattered parcels outside of LMAs:

(i) maintain at least 65 percent of total potential lynx habitat as suitable habitat at the land office scale; and

(ii) maintain no more than 35 percent as temporary non-suitable habitat at the land office scale;

(i) implement the following on defined LMAs:

- (i) maintain at least 65 percent of total potential lynx habitat as suitable lynx habitat, and no more than 35 percent as temporary non-suitable habitat;
- (ii) prohibit conversion of more than 15 percent of the total potential lynx habitat to temporary non-suitable habitat per decade within each lynx management area;
- (iii) maintain at least 20 percent of total potential lynx habitat as winter foraging habitat;
- (iv) identify and retain un-thinned 20 percent of each pre-commercial thinning project area in lynx habitat, where:
 - (A) patches will maintain a density of greater than 2,000 stems per acre;
 - (B) in stands where a density of 2,000 stems per acre is not present, areas will be retained with the greatest density available;
 - (C) retention patches will be designed to be at least five acres when possible to facilitate tracking and promote habitat function;
 - (D) retention patches of dense saplings will:
 - (I) emphasize retention of subalpine fir, Engelmann spruce, and/or grand fir, where available;
 - (II) locate retention patches adjacent to other suitable lynx habitat where practicable; and
 - (III) prohibit entry into retention patches for future pre-commercial thinning or commercial harvest until they structurally meet the department's minimum definition of sawtimber.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendments provide format and numbering consistency, along with necessary organization, while offering greater clarity and understanding of the department's commitments to protect endangered and sensitive species. While grizzly bears currently retain their federally listed status, the department proposes to amend ARM 36.11.432 to incorporate conservation strategies consistent with those contained in the HCP and provide management consistency on other lands that occur outside of the HCP project area. Language referring to bald eagles has been removed from this section as eagles were federally delisted in 2007 and are no longer considered threatened. As such, the department proposes to amend ARM 36.11.436 to incorporate the bald eagle, with revisions to provide simplicity, consistency, better organization, and ease of use.

36.11.432 GRIZZLY BEAR MANAGEMENT AND PROGRAMMATIC RULES ON BLOCKED STILLWATER UNIT LANDS ~~(1) To minimize adverse impacts to grizzly bears when conducting forest management activities within the 90,517 acres of land area known as the Stillwater Block, as referenced in the Department of Natural Resources and Conservation Forested State Trust Lands Habitat Conservation Plan (DNRC HCP) the department shall:~~

- ~~(a) establish seven security zones totaling 22,007 acres;~~
- ~~(b) comply with the following restrictions within the established seven security zones:~~

~~(i) prohibit motorized activities, including public, administrative, or commercial forest management, during the grizzly bear "non-denning period" each year (see ARM 36.11.403(46) for "non-denning" definition);~~

~~(ii) permit motorized activities during the grizzly bear "denning period" each year (see ARM 36.11.403(22) for "denning" definition);~~

~~(iii) allow commercial forest management activities below 6,300 feet elevation during the denning period of each year;~~

~~(iv) prohibit any permanent road construction;~~

~~(v) construct and reclaim any temporary roads and/or skid trails in a manner preventing future use by motorized vehicles, including off-road vehicles, during the non-denning period;~~

~~(vi) minimize the duration of air and ground-based harvest activities to the extent practicable when conducting commercial forest management activities near identified security zones during the non-denning period, particularly in known areas of seasonal importance for bears;~~

~~(vii) minimize the duration of administrative activities near security zones to the extent practicable;~~

~~(viii) make efforts to design helicopter flight routes in a manner that avoids and/or minimizes flight time across security zones during the non-denning period, and/or known seasonally secure areas;~~

~~(ix) where practicable, design flight paths to occur greater than one mile from potentially affected security zones during the non-denning period, or areas of known seasonal importance;~~

~~(x) permit short-term disturbance, subject to (vi) and (vii), in any security zone at any time and for the necessary duration to address road sedimentation issues required by the Aquatic Conservation Strategies in the DNRC HCP and ARM 36.11.421; and~~

~~(c) comply with the following measures on the remaining 68,510 acres of blocked lands outside of security zones:~~

~~(i) implement access management and seasonal restrictions, and road construction requirements according to the DNRC HCP Transportation Plan measures that apply to Class B Lands as defined in the DNRC HCP; and~~

~~(ii) allow motorized public activities, commercial forest management activities, and administrative activities during the denning and non-denning periods, as allowed by the DNRC HCP Transportation Plan.~~

(1) The department commits to following programmatic rules regarding grizzly bears, which include:

(a) provide written brochures that describe risks and concerns regarding humans living and working in bear habitat to contractors and their employees conducting forest management activities in forested state trust lands prior to start of operations;

(b) provide grizzly bear encounter avoidance training to new department personnel within one year of their employment date and refreshing the training for veteran employees every five years;

(c) prohibit department employees, contractors, and their employees from carrying firearms while on duty, unless the person is specifically authorized to carry a firearm under DNRC Policy 30621 to reduce direct mortality risk for grizzly bears;

(d) minimize human-bear conflicts by requiring department personnel, contractors, and their employees to:

(i) store all human or pet food, livestock food, garbage, and other attractants in a bear-resistant manner;

(ii) ensure all burnable attractants such as food leftovers or bacon grease will not be buried, discarded, or burned in an open campfire;

(e) minimize construction of new open roads in riparian management zones (RMZs), wetland management zones (WMZs), and avalanche chutes to reduce adverse effects of open roads on grizzly bear populations, however:

(i) in instances where construction of a new open road in an RMZ, WMZ, or avalanche chute is necessary for project or near-term management objectives, the department will minimize this occurrence to the extent possible and document the circumstances in the environmental analysis;

(f) suspend all motorized forest management activities within 0.6 mile (1 kilometer) of an active den site from the date of discovery through May 31 to protect active grizzly bear dens when encountered, unless:

(i) the department confirms that bears have vacated the den site vicinity prior to May 31, whereupon the department may proceed with the suspended activities;

(g) provide visual screening for grizzly bears in RMZs through the implementation of riparian timber harvest prescribed in ARM 36.11.425, and in WMZs through implementation prescribed in ARM 36.11.426;

(h) design helicopter operations requiring flights less than 500 meters (1,640 feet) above ground level for forest management activities in a manner that avoids or minimizes flight time, and where practicable, at least one mile from:

(i) known seasonally important areas in NROH or recovery zones;

(ii) scattered parcels in rest within recovery zones;

(iii) grizzly bear security zones; and/or

(iv) federally designated security core areas in recovery zones to minimize disturbance impacts to grizzly bears;

(i) following federal delisting, the department shall:

(i) consider grizzly bears as a sensitive species warranting special management consideration; and

(ii) adhere to the measures contained in the Northern Continental Divide Ecosystem conservation strategy for grizzly bears (Appendix 9 and 10) when on trust land management division projects.

(2) In NROH, as defined by Wittinger, et al., 2002, where grizzly bear programmatic rules ARM 36.11.432(1) also apply, the department commits to:

(a) minimize construction of new open roads, where:

(i) new roads will only be managed as open when necessary to meet project or near-term management objectives;

(ii) restricted existing roads will generally remain restricted, except in cases where access easements are granted; but

(iii) there is no target or cap on total road densities;

(b) discourage granting of future easements that relinquish control of roads, except for reciprocal access agreements, cost share agreements, and other federal road agreements;

(c) minimize effects to grizzly bears during the spring period by implementing the following measures:

(i) apply restrictions in the Stillwater block on all restricted roads during the spring period as indicated on the Stillwater Transportation Plan;

(ii) prohibit the following forest management activities in spring habitat during the spring period:

(A) commercial forest management activities, including salvage harvests;

(B) pre-commercial thinning;

(C) heavy equipment slash treatment;

(iii) allow ten days total annually on each administrative unit during the spring period in spring habitat for the purposes of mechanical site preparation, road maintenance, and bridge replacement, applicable to any combination of these activities:

(iv) minimize motorized activities on restricted roads during the spring period in spring habitat, with specific restrictions pursuant to ARM 36.11.436 that apply in the Cabinet-Yaak recovery zone and Cabinet-Yaak NROH; however

(v) allow motorized use to conduct the following low-intensity forest management activities in spring habitat during the spring period:

(A) sale preparation;

(B) road location;

(C) tree planting;

(D) prescribed burning;

(E) data collection (including monitoring);

(F) non-heavy-equipment slash treatment, including chainsaws;

(G) patrol of fall/winter slash burns;

(H) noxious weed management; and

(vi) allow commercial forest management activities, including salvage harvests, and low-intensity forest management activities, within 100 feet of an open road during the spring period in spring habitat;

(d) design new clearcut and seed tree cutting units to provide topographic breaks in view or to retain visual screening for bears by ensuring that vegetation or topographic breaks be no greater than 600 feet in at least one direction from any point in the unit; however

(i) where impracticable the department will minimize sight distance to the extent possible, given the site-specific circumstances

(e) managing gravel development in accordance with the HCP.

(3) In federally defined grizzly bear recovery zones, where grizzly bear programmatic rules, ARM 36.11.432(1), and NROH rules, ARM 36.11.432(2) also apply, the department commits to:

(a) assess impacts to important grizzly bear habitat when designing timber sale projects in recovery zones, elements of which include:

(i) berry fields;

(ii) avalanche chutes;

(iii) riparian areas;

- (iv) wetlands;
- (v) white bark pine stands; and
- (vi) unique congregation or feeding areas;
- (b) develop site-specific mitigation measures that minimize impacts to these elements typically involving scheduling activities while bears are not likely to be using an area, or locating roads or skid trails to conserve important vegetative features, such as dense stands or thickets that provide visual screening;
- (c) leave up to 100 feet of vegetation between open roads and clearcut or seed tree harvest units;
 - (i) leaving vegetation may not be practicable in areas such as:
 - (A) landings and skid trails near roads;
 - (B) clearings for traffic safety at road intersections;
 - (C) in localized fuels reduction areas;
 - (D) units harvested by aerial cable;
 - (E) salvage units with limited standing live vegetation near the roadway; and
 - (F) prescribed burn units where open roads serve as control boundaries;
 - (ii) the department will provide screening to the extent practicable when such conditions are present;
- (d) design new clearcut and seed tree cutting units to provide topographic breaks in view or to retain visual screening for bears by ensuring that vegetation or topographic breaks be no greater than 600 feet in at least one direction from any point in the unit; however
 - (i) in instances of impracticability, the department shall minimize sight distance to the extent practicable; and
 - (ii) the department will document the circumstances in the environmental analysis;
- (e) examine all primary road closures in recovery zones annually and repair ineffective closures within one year of identifying the problem;
- (f) prohibit motorized activities at elevations above 6,300 feet on slopes greater than 45 percent from April 1 through May 31;
- (g) ensure that when issuing or granting easements within grizzly bear recovery zones, except federal road agreements such as cost-share agreements with the U.S. Forest Service or road agreements with the Bureau of Land Management:
 - (i) the forest management bureau will have an active role in the review and authorization of future easements across classified forest land in a recovery zone;
 - (ii) easements granted for existing restricted routes or newly proposed routes require the applicant to demonstrate that all other access possibilities have been explored prior to the department considering the application for access across trust lands;
 - (iii) work with easement applicants to incorporate easement terms to avoid or mitigate impacts to bears, which may include, but are not limited to:
 - (A) gated entry;
 - (B) maintenance of visual screening along routes;
 - (C) absorbing costs of gating associated with secondary and primary access routes;
 - (iv) document for each access easement granted in a recovery zone;

(A) how the granting of the easement was evaluated for each access easement granted in a recovery zone;

(B) how alternative routes were considered for each access easement granted in a recovery zone;

(C) how mitigations were considered and applied for each access easement granted in a recovery zone;

(v) work with the existing and future grantees to avoid or mitigate impacts to grizzly bears associated with motorized use as pertaining to access agreements on roads in grizzly bear recovery zones where the department is the grantor.

(4) In the Stillwater Block, where the grizzly bear programmatic rules, ARM 36.11.432(1), NROH rules, ARM 36.11.432(2), and recovery zone rules, ARM 36.11.432(3) also apply, the department commits to:

(a) manage transportation according to specific requirements in the Stillwater Transportation Plan, which includes:

(i) allowable road miles by road class, activity category, restriction type, and road locations;

(ii) permanent routes needed but not yet constructed;

(iii) changes to the plan may only occur following review and approval by the forest management bureau;

(b) document the circumstances if a road is encountered that is not in the Stillwater Transportation Plan, and evidence suggests that the road existed prior to February 2012;

(c) add segment(s) to the Stillwater Transportation Plan and consider the addition(s) part of the original baseline only following adequate documentation and review by the forest management bureau;

(d) maintain up to 15 miles of usable temporary roads within the block, which shall be built to a minimum standard and reclaimed within one operating season following completion of project-related activities;

(i) no more than two miles of temporary roads may be maintained on the Swift-BPA portion of the block;

(ii) no more than five miles of temporary roads may be maintained on the Lazy-Swift portion of the block;

(e) establish an accurate revised baseline, as applicable, for roads that may be added or removed from the Stillwater Transportation Plan when lands are acquired or disposed in the Stillwater block;

(f) maintain informational signs and provide public information pertaining to bear presence and bear awareness on the Stillwater and Coal Creek State Forests;

(g) apply the following to seven geographically distinct security zones in the Stillwater block that comprise 22,007 acres:

(i) no additional permanent roads will be constructed in security zones;

(ii) access needed for management activities will be from existing roads or temporary roads;

(iii) motorized activities including public, department administrative, and department commercial forest management activities are prohibited during the grizzly bear non-denning season from April 1 through November 15 each year;

(iv) commercial forest management activities shall only be allowed during the denning season below 6,300 feet in security zones;

(v) the department shall construct and reclaim temporary roads and skid trails after completion of project activities in a manner that prevents future use by motorized vehicles, including off-road vehicles, during the non-denning season;

(vi) when conducting commercial forest management activities near identified security zones during the non-denning season, the department will minimize the duration of ground-based harvest activities to the extent practicable, particularly in known areas of seasonal importance for bears;

(vii) the department will minimize the duration of low intensity forest management activities near security zones to the extent practicable;

(viii) the department shall make efforts to design helicopter flight routes in a manner that avoids and/or minimizes flight time across security zones, and/or known seasonally secure areas during the non-denning season;

(ix) when conducting commercial forest management activities near identified security zones during the non-denning season, the department will minimize the duration of air-based harvest activities to the extent practicable, particularly in known areas of seasonal importance for bears;

(x) where practicable, the department shall design flight paths to occur greater than one mile from potentially affected security zones and/or areas of known seasonal importance during the non-denning season;

(xi) short-term disturbance will be allowed in any security zones at any time and for the necessary duration to address road sedimentation corrective actions;

(xii) commercial forest management activities, including salvage, are allowed in security zones during the winter period of November 16 through March 31 below 6,300 feet;

(h) limit the number of active gravel pits on the Stillwater block as described in the HCP.

(5) In the Swan River State Forest, where grizzly bear programmatic rules, ARM 36.11.432(1), NROH rules, ARM 36.11.432(2), and recovery zone rules, ARM 36.11.432(3) also apply, the department commits to:

(a) manage access and security for grizzly bears by adhering to the Swan River State Forest Transportation Plan which will specify:

(i) five defined management subzones;

(ii) existing road segments by road class, restriction type, and location; and

(iii) permanent routes needed, but not yet constructed by the department;

(b) document the circumstances if a road is encountered that is not in the Swan River State Forest Transportation Plan, and evidence suggests that the road existed prior to February 2012;

(c) add segment(s) to the Swan River State Forest Transportation Plan and consider the addition(s) part of the original baseline only following adequate documentation and review by the forest management bureau;

(d) adjust numbers to accurately reflect baseline road amounts if a Swan River State Forest parcel is sold or traded;

(e) minimize the risk of death or injury to bears, and reduce displacement of bears due to the presence of roads by:

(i) limiting new road construction to the approximate locations and lengths indicated on the Swan River State Forest Transportation Plan map, including caps on additional restricted road amounts allowed under the forest management HCP;

(ii) ensuring temporary roads on the Swan River State Forest will not exceed 6.5 miles in length in any given year;

(A) building these roads to a minimum standard and reclaimed within one operating season following completion of project-related activity;

(f) maintain informational signs and provide public information pertaining to bear presence and bear awareness on the Swan River State Forest;

(g) considering opportunities to work with adjacent landowners in a cooperative manner to support grizzly bear conservation efforts;

(h) conducting commercial forest management activities in each of the defined management subzones, including salvage harvest, for a maximum period of three years, followed by a mandatory rest period of at least six years, where:

(i) each subzone will have its own management schedule independent of the other subzones;

(ii) the three-year management period may be extended due to management delays beyond the control of the department, such as:

(A) extreme weather events;

(B) fire events;

(C) area closures due to fire danger; and

(D) legal injunction;

(iii) contractor equipment failure and extensions to address market fluctuations are not considered allowable delays;

(i) allowing the following activities in rested subzones:

(i) commercial forest management activities are allowed in winter below 6,300 feet without limitation during rest periods as rest status does not apply during the winter period of November 16 through March 31; and

(ii) low-intensity forest management activities are allowed during the rest period, except for restrictions during the spring period as described in ARM 36.11.432(2)(c);

(iii) commercial forest management activities for minor projects, including salvage, are allowed for a limited number of days after the spring period;

(A) for the Swan River State Forest, a total of 30 operating days in aggregate are allowed per year, per rested subzone;

(B) these days can only be used June 16 through September 15;

(C) this 30-day allowance may also be applied to resting subzones that have exceeded rest beyond six years and are not yet ready for large-scale planned commercial harvest;

(D) when tracking the number of operating days allowed for minor projects:

(I) two commercial operations within 0.5-mile radius of one another count as one operation for those days both are active;

(II) operations more than 0.5-mile radius apart are considered distinct and days must be tallied separately;

(III) commercial forest management activities within 100 feet of an open road do not count toward the allowable operating day limits;

(i) conducting salvage harvest activities when necessary on management subzones in rest status under the following order of preference when economically and operationally practicable:

(i) conduct salvage during the winter period;

(ii) for salvage harvest that must occur outside of the winter period, conduct the harvest in an expedient manner;

(iii) days used for operating salvage harvest from June 16 through September 15 shall count toward the 30 days allowed for minor projects;

(iv) the department will forgo unused annual operating days in other inactive subzones to compensate for the number of days required to complete such projects;

(k) extending salvage projects that cannot be accomplished by applying ARM 36.11.432(5)(i) above between 31 and 150 days during non-denning period under the following conditions:

(i) following a 31 to 150-day extension for salvage, the department would be required to restart the rest period; where

(A) in this situation, a full uninterrupted six-year rest period must be achieved before allowing another 31 to 150-day interruption; and

(B) if a salvage harvest during the restarted rest period requires more than 30 days to complete, the action shall require review and approval by the forest management bureau;

(ii) the department will document the necessity for interrupting the rest period;

(iii) a department wildlife biologist will develop a site-specific mitigation plan addressing potential effects on grizzly bears through habitat considerations, timing restrictions, and transportation management and access, examples of which include:

(A) important secure areas;

(B) berry fields;

(C) avalanche chutes;

(D) riparian areas;

(E) wetlands;

(F) white bark pine stands; and

(G) unique congregation or seasonal feeding areas;

(iv) a copy of the mitigation documentation highlighting those measures implemented by the project leader and decision maker, after considering input from the department wildlife biologist, will be submitted to the forest management bureau for review prior to a project decision;

(l) limit the number of active gravel pits on the Swan River State Forest as described in the HCP.

(6) On scattered parcels in recovery zones, where grizzly bear programmatic rules, ARM 36.11.432(1), NROH rules, ARM 36.11.432(2), and recovery zone rules, ARM 36.11.432(3) also apply, the department commits to:

(a) evaluate each open road segment occurring within a forest management project to assess the potential to restrict access on that segment;

(b) not exceed baseline open road amounts at the administrative unit level, established August 31, 2018, on classified forest lands, but increases in open road densities at the project level to address road relocation considerations would not count against the unit-level cap;

(c) conduct commercial forest management activities and salvage harvest for each scattered parcel in a recovery zone for a maximum management period of four years, followed by a mandatory rest period of at least eight years, where each parcel will have its own management schedule independent of other parcels;

(d) extend the four-year management period, when necessary, due to management delays beyond the control of the department, such as:

(i) extreme weather events;

(ii) fire events;

(iii) area closures due to fire danger; and

(iv) legal injunction;

(e) write an explanation of the extension and submit it to the forest management bureau for approval at the time the extension is invoked;

(i) contractor equipment failure is not considered an allowable delay;

(f) within rested parcels:

(i) the rest status does not apply during the winter period of November 16 through March 31, and commercial forest management activities are allowed in winter below 6,300 feet without limitation during rest periods;

(ii) low-intensity forest management activities will be allowed during the rest period, except for restrictions during the spring period, as described in ARM 36.11.432(2)(c);

(iii) commercial forest management activities for minor projects, including salvage, are allowed for a limited number of days after the spring period from June 16 through November 15;

(iv) each administrative unit shall have a maximum number of allowable operating days per year on rested scattered parcels as follows:

(A) Clearwater Unit - 45 days;

(B) Helena Unit - 45 days;

(C) Kalispell Unit - 60 days;

(D) Stillwater Unit (scattered parcels) - 45 days;

(v) when tracking the number of operating days allowed for minor projects two commercial operations within 0.5-mile radius of one another count as one operation for those days both are active;

(vi) operations more than 0.5-mile radius apart are considered distinct, and operating days must be considered additive and tallied separately;

(vii) commercial forest management activities within 100 feet of an open road do not count toward the allowable operating day limits;

(g) conduct salvage harvest activities when necessary on scattered parcels in rest status under the following order of preference when economically and operationally practicable:

(i) conduct salvage during the winter period;

(ii) conduct salvage harvest in an expedient manner when it must occur outside of the winter period;

(iii) days used for operating salvage harvest from June 15 through November 15 shall count against the allowable days per administrative unit for minor projects;

(iv) the department will forgo unused annual allowable operating days usable in other inactive parcels to compensate for the number of days required to complete such larger projects;

(h) salvage harvest that cannot be accomplished using the four approaches listed above may be extended up to 150 days;

(i) the department is not required to restart the 8-year rest period on scattered parcels, but only one interruption is allowed per 8-year rest period per parcel for this purpose;

(i) document the necessity for interrupting the rest period;

(ii) a department wildlife biologist will develop a site-specific mitigation plan addressing potential effects on grizzly bears through timing restrictions, transportation management and access, and habitat considerations, examples of which include:

(A) important secure areas;

(B) berry fields;

(C) avalanche chutes;

(D) riparian areas;

(E) wetlands;

(F) white bark pine stands; and

(G) unique congregation areas;

(iii) a copy of the mitigation documentation highlighting those measures implemented by the project leader and decision maker, after considering input from the biologist, will be submitted to the forest management bureau for review prior to a project decision;

(i) One gravel pit per administrative unit may be operated as described in the HCP.

(7) On scattered lands in the Cabinet-Yaak ecosystem (CYE) and associated NROH, where grizzly bear programmatic rules, ARM 36.11.432(1), NROH rules, ARM 36.11.432(2), recovery zone rules, ARM 36.11.432(3), and rules for scattered parcels in recovery zones ARM 36.11.432(6) also apply, the department commits to:

(a) allow commercial forest management activities, including salvage harvests after the spring period, as it pertains to minor projects implemented during the eight-year rest period in ARM 36.11.432(6)(f), for parcels in both the CYE recovery zone and the CYE NROH, but are limited to the following number of annual operating days per administrative unit:

(i) Libby unit - 90 days total (30 west and 60 east);

(ii) Plains unit - 45 days;

(A) within these maximum operating days, commercial forest management activities and salvage harvest are limited to a total of ten parcels per non-denning season for each unit;

(B) when applying the allowable days, the duration of such management is limited to 15 days in aggregate on each parcel for each unit;

(b) prepare a mitigation plan when conducting salvage projects following ARM 36.11.432(6)(g) on parcels in rest status in the CYE and CYE NROH, as required under ARM 36.11.432(6)(i)(ii), and the project leader will submit the mitigation plan to the forest management bureau for approval prior to a project decision;

(c) conduct motorized use associated with low-intensity forest management activities on up to 50 percent of the parcels as deemed necessary in the CYE recovery zone and CYE NROH in spring habitat during the spring period;

(i) these uses include:

(A) tree planting;

- (B) prescribed burning;
- (C) patrol of slash burns; and
- (D) noxious weed management;
- (ii) any combination of the aforementioned activities is limited to ten days per parcel within the spring period each year;
- (iii) motorized activity in spring habitat during the spring period associated with sale preparation, road location, data collection, and slash treatment is prohibited;
- (iv) up to ten days total per year per administrative unit may be used for the purposes of road maintenance, mechanical site preparation, and bridge replacement;
- (d) design, for scattered parcels in the CYE recovery zone only, helicopter operations less than 500 meters (1,640 feet) above ground level for commercial log yarding to avoid important areas for grizzly bears by requiring flight paths to be at least one mile from scattered parcels in rest or federally designated security core areas;
 - (i) where practicable, flight paths will also be designed to avoid or minimize disturbance to any known seasonally important areas;
- (e) limit, for scattered parcels in the CYE recovery zone and NROH only, helicopter use associated with activities to those requiring less than 48 hours to complete, including, but not limited to:
 - (i) weed control;
 - (ii) prescribed burning ignition and control actions;
 - (iii) aerial seeding; and
 - (iv) moving large pieces of equipment or materials to remote and/or rugged locations.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendments provide format and numbering consistency, along with necessary organization, while offering greater clarity and understanding of the department's commitments to protect endangered and sensitive species. While grizzly bears currently retain their federally listed status, the department proposes to amend ARM 36.11.432 to incorporate conservation strategies consistent with those contained in the HCP and provide management consistency on other lands that occur outside of the HCP project area. Language referring to bald eagles has been removed from this section as eagles were federally delisted in 2007 and are no longer considered threatened. As such, the department proposes to amend ARM 36.11.436 to incorporate the bald eagle, with revisions to provide simplicity, consistency, better organization, and ease of use.

36.11.436 SENSITIVE SPECIES (1) through (6) remain the same.

(7) BALD EAGLE:

(a) the department shall manage for bald eagles consistent with the Montana Bald Eagle Management Guidelines (2010);

(b) to guide management, the department may use site-specific management plans by a qualified biologist where applicable;

(c) maintenance of habitat for breeding bald eagles, where no site-specific management plans are in place, shall include recognition and delineation of three management zones around each active bald eagle nest, including:

(i) nest site area;

(ii) primary use area; and

(iii) home range;

(d) the department shall consider the following when conducting forest management activities within nest site areas:

(i) mechanized activities are restricted between February 1 and August 15, unless:

(A) the territory is documented as unoccupied during that breeding season;

(B) the eagles have fledged;

(C) nesting has failed;

(D) eagles have left the nesting area; or

(E) if allowed as specified in a site-specific management plan;

(ii) helicopter activity for forest management purposes shall not occur within 1,000 feet of an occupied bald eagle nest; however, the department may grant exceptions for other motorized activities such as road repair, maintenance, and planting, if, following site review and documentation, activities are deemed to be:

(A) of short duration;

(B) outside of critical nesting periods; and

(C) of minimal risk to nesting adults or offspring;

(iii) harvest within 330 feet of an active nest tree is prohibited, and the department shall design timber harvests to maintain the structural and ecological characteristics of the nest site area to include:

(A) moderate to well-stocked overstory;

(B) large emergent trees;

(C) snags;

(D) a multi-storied canopy; and

(E) vegetative screening from nearby low and high intensity human activity;

(iv) the department shall protect such areas from firewood cutting and gathering, to the extent practicable;

(v) the department shall limit additional human activity, both low and high intensity, over which it has control between February 1 and August 15 unless it has been documented by a qualified biologist that:

(A) the eagles have fledged;

(B) nesting has failed; or

(C) the eagles have left the nesting area;

(vi) the department shall limit permanent development associated with forest management activities;

(vii) the department shall close existing roads and trails under its control to motorized use between February 1 and August 15, if:

(A) vegetative screening from the nest is insufficient to prevent undue disturbance and human use is high; or

(B) the eagles' behavioral response suggests it is necessary;

(e) the department shall include the following considerations when conducting forest management activities within bald eagle primary use areas:

(i) limit mechanized activities between February 1 and August 15, unless it has been documented by a qualified biologist that:

(A) the nest site is unoccupied during that breeding season;

(B) the eagles have fledged;

(C) nesting has failed;

(D) eagles have left the nesting area;

(E) it has been demonstrated that eagles show tolerance to the activity; or

(F) if allowed as specified in a site-specific management plan;

(ii) low intensity and high intensity activities may be allowed during this restriction period if ample visual screening, including vegetative cover and/or topography, is present between the affected portion of the primary use area and the active nest tree;

(iii) the department may grant exceptions for such activities as:

(A) road repair;

(B) maintenance; and

(C) planting if following site review and documentation, activities are deemed

to:

(I) be of short duration;

(II) be outside of critical nesting periods; and

(III) present minimal risk to nesting adults or offspring;

(iv) design timber harvests and salvage to maintain structural and ecological characteristics particularly:

(A) moderate or greater stocking in overstory;

(B) large emergent trees;

(C) multi-storied canopy, if present;

(D) snags;

(E) potential nest trees;

(F) perch trees;

(G) roost trees; and

(H) vegetative screening from areas of both low and high intensity human activity;

(v) low intensity human activity may occur, but high intensity human activity, over which the department has control, shall not occur between February 1 and August 15, unless ample visual screening, including vegetative cover and/or topography, is present between the primary use area and nest tree, or it has been documented by a qualified biologist that:

(A) the nest site is unoccupied during that breeding season;

(B) the eagles have fledged;

(C) nesting has failed;

(D) eagles have left the nesting area;

(E) it has been demonstrated that eagles show tolerance to the activity; or

(F) otherwise allowed in a site-specific management plan;

(vi) minimize permanent development associated with forest management activities;

(vii) minimize construction of new roads, trails, and open access routes;

(f) the department shall consider the following when conducting forest management activities within the bald eagle home range:

(i) design timber harvests to protect, and/or enhance, key habitat components that already exist in close proximity to:

(A) lakes;

(B) rivers;

(C) wetlands;

(D) meadows; or

(E) known flight paths, such as:

(I) large snags;

(II) large perch trees;

(III) emergent trees; and

(IV) roost trees;

(ii) design projects involving human activities, both low and high intensity, to minimize disturbance to foraging and roosting eagles, and to avoid conflict in frequently used areas during the nesting season;

(iii) minimize construction of new roads, trails, and open access routes.

(8) BLACK-BACKED WOODPECKER:

(a) when developing prescriptions for harvest in areas burned within the last five years in forest patches greater than 40 acres in size, the department will:

(i) manage at least ten percent of the burned acreage in an unharvested condition that is broadly representative of the entire burn (i.e., similar habitat types, fire intensity, elevations, stand density, and stand age class prior to burn) to be determined using site-specific information at the project level;

(ii) manage such areas in relatively contiguous blocks favoring close proximity to unharvested fire-killed deferred stands on neighboring ownerships considering the habitat needs of black-backed woodpeckers; and

(iii) leave standing sub-merchantable burned trees where soil, slope stabilization, and human safety concerns allow.

(9) COMMON LOON:

(a) for all lakes where common loon nesting pairs exist, the department shall:

(i) limit construction of new permanent roads, structures, or permanent developments within a 500-foot radius of the nest site; and

(ii) limit mechanized activity within a 500-foot radius of the nest site between April 15 and July 15;

(b) for lakes which have been recently occupied but for which no currently nesting pair resides, the department shall:

(i) survey lakeshores for nesting loons prior to developing plans for lakeshore development, road construction, or timber harvest activities that will occur within 500 feet of the lakeshore;

(ii) prior to finalizing plans for any new roads, developments, timber sales, or intensive motorized activity that will occur on or near any lake potentially suitable for use by loons, design appropriate mitigation measures specific to the situation; and

(iii) if nesting is not documented, identify sites for proposed projects that would least likely be occupied by nesting loons in the future.

(10) FISHER:

(a) The department shall assess fisher habitat on projects that contain preferred fisher cover types for lands administered by the department's northwest land office and southwest land office;

(b) when conducting forest management activities, as consistent with 77-5-301 and 77-5-302, MCA, the department shall:

(i) implement retention measures contained in ARM 36.11.425 when managing within preferred fisher cover types associated with riparian and streamside management zones to provide habitat and connectivity;

(A) where treatments reduce stand density below moderately stocked levels, the department shall make efforts to provide forest connectivity along the opposite stream bank;

(B) the department shall define a minimum of one buffered management zone connecting to other fisher habitat through sites where individual perennial and intermittent stream courses are difficult to define, such as those braided with many channels;

(C) the department shall retain large snags, snag recruits, and CWD pursuant to ARM 36.11.409 through 36.11.414, and promote recruitment if existing abundances are below expected levels;

(D) following large-scale stand replacement disturbance events in preferred fisher cover types, the department shall give consideration to maintaining an abundance of large snags and CWD within 100 feet of class 1 streams and 50 feet of class 2 streams;

(E) when practicable, the department shall avoid constructing new roads in preferred fisher cover types within 100 feet of class 1 streams or 50 feet of class 2 streams, and where feasible, the department shall incorporate use of temporary roads, and obstruct or obliterate unnecessary existing roads;

(c) the department shall manage for at least one 300-foot-wide forested patch providing connectivity between adjacent third order drainages, preferably in saddles, where landscape conditions allow;

(d) the department shall consider importance of late-successional riparian and upland forest in meeting the life requisites of fishers.

(11) FLAMMULATED OWL:

(a) when harvesting timber where greater than 50 contiguous acres of flammulated owl preferred habitat types exist, the department shall:

(i) favor seral ponderosa pine on sites where historical fire regimes favor it;

(ii) favor older-aged ponderosa pine or, secondarily, Douglas-fir for retention or recruitment on warm, dry slopes;

(iii) retain and recruit large-sized snags pursuant to ARM 36.11.404;

(iv) open up dense stands on warm, dry slopes towards a basal area of 35 to 80 square feet;

(v) promote non-uniform stands and retain occasional dense patches of conifer regeneration and shrubs.

(12) PEREGRINE FALCON:

(a) the department shall manage for peregrine falcons within a 0.25 mile radius of a known nest site, and develop appropriate silvicultural mitigation measures for the particular situation;

(b) the department shall limit human activity, both low and high intensity, and mechanized activity typically within a 0.5 mile radius from known nest sites between March 1 and August 1; and

(c) the department shall determine distances for activity restrictions on a site-specific basis for aerial operations.

(13) PILEATED WOODPECKER:

(a) the department shall manage stands containing pileated woodpecker preferred habitat in larger, rather than smaller blocks, whenever practicable;

(i) where large contiguous tracts of such stands are unavailable, the department shall consider management of smaller stands in close proximity to one another, or close to similar stands on adjacent ownerships;

(ii) the department shall consider areas of pileated woodpecker preferred habitat of less than 40 acres, unless they are close to other appropriate stands;

(iii) within pileated woodpecker preferred habitat, the department shall manage for snags, snag recruits, and CWD according to ARM 36.11.411, 36.11.413, and 36.11.414, particularly favoring retention of western larch, ponderosa pine, and black cottonwood, considering amounts that would historically occur on similar sites;

(A) the department shall consider broken-top snags greater than 20 feet tall priority candidates for retention;

(iv) where appropriate, the department shall manage to encourage retention of black cottonwood, particularly where it can attain large size.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment combines all sensitive species rules under one rule, providing consistency, simplicity, better organization, and ease of use. The bald eagle is no longer listed as a threatened and endangered species and has been incorporated into the sensitive species rule set. As a part of the amendment of this rule, ARM 36.11.436(8)(a) pertaining to the activity restriction was removed, given that: 1) the measure would likely provide limited benefit to the species; 2) with warmer drier conditions anticipated fire-killed forests are not likely to be limiting for the species; and 3) conflicts would be reduced in situations where the department would be restricting operational access on shared roads, while other landowners are not, rendering implementation of the measure on department lands impractical.

36.11.444 GRAZING ON CLASSIFIED FOREST LANDS AND OTHER LANDS WITHIN GRIZZLY BEAR RECOVERY ZONES AND NON-RECOVERY OCCUPIED HABITAT (NROH) (1) The department shall inspect grazing licenses issued on all classified forest trust lands before the renewal date to determine:

(a) through (13) remain the same.

(14) The department shall discourage the issuance of new grazing licenses and leases for the purpose of grazing sheep or other small livestock on NROH lands.

(15) Prior to issuing a license or lease for the use of small livestock on NROH lands for the purpose of weed control, a mitigation plan shall be prepared for the purpose of minimizing impacts to grizzly bears prior to issuing the decision; which

(a) will include a description of the location of the project and documentation identifying known activity by bears in the area;

(b) may include, but is not limited to, requirement of a full-time shepherd, guard dogs, nighttime electric pens, lessee assuming cost of losses incurred by predators, prohibition of grazing in spring habitat during spring periods, attending training on hazing techniques, and maintaining a list of professionals providing hazing services.

(16) On NROH and grizzly bear recovery zone lands, the department will cooperate with other parties, agencies, and bear management specialists on a case-by-case basis to address prompt removal of livestock carcasses identified as creating the potential for bear-human encounters.

(17) On lands within grizzly bear recovery zones, the department will prohibit authorization of any new small livestock (smaller than a cow) grazing licenses or leases, including those for the purposes of weed control, and will also not convert existing licenses to allow the grazing of small livestock.

(18) On lands within grizzly bear recovery zones, the department will not initiate establishment of new grazing licenses; however, proposals initiated by the public for larger, less vulnerable classes of livestock (such as cows and horses) may be considered and allowed.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment incorporates HCP measures that minimize adverse effects to grizzly bears associated with livestock grazing for the purpose of management consistency.

36.11.447 CATEGORICAL EXCLUSIONS (1) through (3)(g) remain the same.

(h) Issuing permits for temporary use of or easements for permanent access on existing roads.

(i) through (k) remain the same.

(l) Gathering small quantities of forest products for personal or commercial use, such as:

(i) through (v) remain the same.

(w) Individual timber permits sales of up to 400,000 500,000 board feet, or salvage harvests of up to 500,000 board feet if no extraordinary circumstances occur as outlined in ARM 36.11.447(2)(a) through (j).

(x) low-intensity forest management activities as defined in ARM 36.11.403 (43).

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendments will provide clarity on issuing temporary use permits on existing roads; include commercial use for gathering small quantities of forest products; provide clarity for the field; streamline certain forest management activities without extraordinary circumstances; and

correspond with Chapter 82, Laws of 2019 (House Bill 70), an act increasing the amount of timber allowed for sale under commercial permits.

36.11.450 TIMBER PERMITS (1) remains the same.

(2) Under the authority of 77-5-212, MCA, the department may issue commercial timber permits at commercial rates, and without advertising, for sales that do not exceed ~~100,000~~ 500,000 board feet of timber, ~~or, in cases of emergency salvage, do not exceed 500,000 board feet of timber.~~

(a) through (c) remain the same.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, 77-5-212, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, 77-5-212, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 82, Laws of 2019 (House Bill 70), an act increasing the amount of timber allowed for sale under commercial permits and amending 77-5-201 and 77-5-212, MCA. The department is amending all corresponding rules.

4. The department proposes to repeal the following rules:

36.11.429 THREATENED AND ENDANGERED SPECIES - BALD EAGLE

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed repeal is necessary as the bald eagle is no longer listed as a threatened and endangered species. The department proposed to amend ARM 36.11.436-Sensitive Species as a set of rules for all current and future sensitive species, including the bald eagle. This will provide consistency, simplicity, better organization, and ease of use.

36.11.430 THREATENED AND ENDANGERED SPECIES - GRAY WOLF

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule as the gray wolf is no longer a federally listed threatened species.

36.11.431 THREATENED AND ENDANGERED SPECIES - GRIZZLY BEAR

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.432 to be consistent with conservation strategies contained in the HCP. The amendments to ARM 36.11.432 are necessary to incorporate

measures based on more current scientific information, and to provide management consistency on other lands that occur outside of the HCP project area.

36.11.433 GRIZZLY BEAR MANAGEMENT ON OTHER WESTERN MONTANA LANDS

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.432 to be consistent with conservation strategies contained in the HCP. The amendments to ARM 36.11.432 are necessary to incorporate measures based on more current scientific information, and to provide management consistency on other lands that occur outside of the HCP project area but adopt similar rules consistent with conservation strategies contained in the HCP. The revised rules are necessary to incorporate measures based on more current scientific information, and to provide management consistency on other lands that occur outside of the HCP.

36.11.434 GRIZZLY BEAR MANAGEMENT ON EASTERN MONTANA LANDS

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.432 to be consistent with conservation strategies contained in the HCP. The amendments to ARM 36.11.432 are necessary to incorporate measures based on more current scientific information, and to provide management consistency on other lands that occur outside of the HCP project area.

36.11.435 THREATENED AND ENDANGERED SPECIES - CANADA LYNX

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.428 as a set of all current and future listed threatened and endangered species, including the Canada lynx, to provide format and numbering consistency, and necessary organization, and incorporate conservation strategies consistent with those contained in the HCP which are based on more current scientific information, and to provide management consistency on other lands that occur outside of the HCP project area.

36.11.437 SENSITIVE SPECIES - FLAMMULATED OWL

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.436. This will provide consistency, simplicity, better organization, and ease of use.

36.11.438 SENSITIVE SPECIES - BLACK-BACKED WOODPECKER

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.436 as a set of rules for all current and future sensitive species. This will provide consistency, simplicity, better organization, and ease of use.

36.11.439 SENSITIVE SPECIES - PILEATED WOODPECKER

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.436 as a set of rules for all current and future sensitive species. This will provide consistency, simplicity, better organization, and ease of use.

36.11.440 SENSITIVE SPECIES – FISHER

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.436 as a set of rules for all current and future sensitive species. This will provide consistency, simplicity, better organization, and ease of use. As a part of the proposed amendment to ARM 36.11.436, several sections were revised to provide consistency with the HCP riparian harvest strategy definitions and commitments and provide clarifications regarding required tree retention levels suitable for providing habitat connectivity for fisher and Canada lynx.

36.11.441 SENSITIVE SPECIES - COMMON LOON

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.436 as a set of rules for all current and future sensitive species. This will provide consistency, simplicity, better organization, and ease of use.

36.11.442 SENSITIVE SPECIES - PEREGRINE FALCON

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.436 as a set of rules for all current and future sensitive species. This will provide consistency, simplicity, better organization, and ease of use.

36.11.451 DEFINITIONS

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

REASONABLE NECESSITY: The proposed repeal eliminates outdated and unnecessary definitions and moves remaining definitions to ARM 36.11.403, providing consistency, simplicity, and ease of use.

36.11.452 TIMBER CONSERVATION LICENSE APPLICATION
CONDITIONS AND FORMS

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 407, Laws of 2019 (House Bill 441) an act eliminating timber conservation licenses for state lands and repealing 77-5-208, MCA. The bill was signed by Governor Bullock on May 9, 2019, becoming effective immediately. The department is repealing all corresponding rules.

36.11.453 TIMBER CONSERVATION LICENSE BIDDING AND BONDING

AUTH: 77-5-201, MCA
IMP: 77-5-208, 77-5-223, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 407, Laws of 2019 (House Bill 441) an act eliminating timber conservation licenses for state lands and repealing 77-5-208, MCA. The bill was signed by Governor Bullock on May 9, 2019, becoming effective immediately. The department is repealing all corresponding rules.

36.11.454 TIMBER CONSERVATION LICENSE CONDITIONS AND
RESTRICTIONS

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 407, Laws of 2019 (House Bill 441) an act eliminating timber conservation licenses for state lands and repealing 77-5-208, MCA. The bill was signed by Governor Bullock on May 9, 2019, becoming effective immediately. The department is repealing all corresponding rules.

36.11.455 ASSIGNMENTS

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 407, Laws of 2019 (House Bill 441) an act eliminating timber conservation licenses for state lands and repealing 77-5-208, MCA. The bill was signed by Governor Bullock on May 9, 2019, becoming effective immediately. The department is repealing all corresponding rules.

36.11.456 TIMBER CONSERVATION LICENSE CONTRACT TERMINATION

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 407, Laws of 2019 (House Bill 441) an act eliminating timber conservation licenses for state lands and repealing 77-5-208, MCA. The bill was signed by Governor Bullock on May 9, 2019, becoming effective immediately. The department is repealing all corresponding rules.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted in writing to: Sierra Farmer, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, Montana 59804; telephone (406) 542-4314; sierrafarmer@mt.gov, and must be received no later than 5:00 p.m., July 29, 2020.

6. Mark Phares, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

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

a mailing preference is noted in the request. Such written request may be mailed or delivered to Aliselina Strong, P.O. Box 201601, 1539 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail astrong@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. The primary bill sponsors were contacted on June 11, 2020, via email.

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

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Mark Phares
MARK PHARES
Rule Reviewer
Natural Resources and Conservation

Certified to the Secretary of State June 16, 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 PROPOSED
Rules I through IV pertaining to child	)	ADOPTION
welfare prevention and support)	
services contract enrollment and	)	NO PUBLIC HEARING
participation	)	CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to adopt 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 July 10, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I PROVIDER PARTICIPATION (1) As a condition to contract with the Department of Public Health and Human Services (department), Child and Family Services Division, for Child Welfare Prevention and Support Services, including but not limited to prevention to both families, intervened on by the department, or at risk of entering the child welfare system, preservation, family support and reunification, a provider must:

(a) comply with applicable state and federal statutes, rules, and regulations;
(b) comply with applicable Montana statutes and rules governing licensure and certifications; and

(c) follow regulations and statutes governing programs the department has authority to administrate and distribute funds for, including:

(i) Federal Child Access and Visitation Grant Program funds from U.S. Department of Health and Human Services, Administration of Children and Families, Office of Child Support Enforcement established under section 391 of the Personal Responsibility and Work Opportunity Reconciliation Act (welfare reform) of 1996 (Pub. L. 104-193, 110 Stat. 2258), also known as title III, subtitle I Enhancing Responsibility and Opportunity for Nonresidential Parents, and Section 469B of the Social Security Act;

(ii) 1979 Title IV-B Social Security Act, Subpart 2;

(iii) Title IV-E Social Security Act; and

(iv) 1974 Child Abuse Prevention and Treatment Act (CAPTA).

AUTH: 41-3-101, 41-3-131, 52-1-103, 52-2-111, MCA

IMP: 2-4-201, 41-3-101, 41-3-302, 42-1-102, 52-1-103, 52-2-111, MCA

NEW RULE II PROVIDER ENROLLMENT AND AGREEMENTS

(1) Providers entering into a Child Welfare Prevention and Support Services contract must:

- (a) follow requirements listed in the contract;
 - (b) submit a narrative and service array menu;
 - (c) provide information and documentation regarding:
 - (i) sanctions, suspensions, exclusions, or civil monetary penalties imposed against a provider, person, or entity with an ownership or control interest in a provider, or agent or managing employee of a provider by a Medicare program, a state Medicaid program, or other federal program(s); and
 - (ii) criminal charges brought against, and criminal convictions of, a provider, person, or entity with ownership or control interest in a provider, or agent or managing employee of a provider related to a person's or entity's involvement in a Medicare, Medicaid, or Title XX Services program.
 - (d) submit valid and current copies of certificates for employees licensed or trained in specific models and practices outlined in the Child Welfare Prevention and Support Services Matrix Payment Fee Schedule and Catalog;
 - (e) provide written assurance the provider understands and agrees they are solely responsible in maintaining sustainability of their program, and will comply with fidelity of well supported, supported, promising, and general practices (i.e., evidence-based, trauma focused, or evidence-informed models) listed in their service array menu in relation to the Child Welfare Prevention and Support Services Matrix Payment Fee Schedule and Catalog;
 - (f) implement and enforce, as internal company policy, mandatory reporting requirements of 41-3-201, MCA, requiring employees with knowledge of or reasonable cause to suspect child abuse or neglect, to report the matter promptly to the Department of Public Health and Human Services, Child and Family Services Division, Centralized Intake (CI) Bureau, at 1-866-820-5437 (toll-free); and
 - (g) provide employees, within the first week of hiring, written notification of mandatory reporting law and provider's policy and practice enforcing the law. The provider shall maintain written documentation bearing the employee's dated signature, acknowledging receipt of such written notification.
- (2) An enrolled provider shall not retroactively change category of service for which a provider is enrolled and must submit a narrative and service array menu outlining new categories to the department's liaison.
- (a) An approved change in service category will be effective on or after the effective date of required licenses and certifications.
 - (b) Change will apply to services provided on or after the effective date of change.

(3) The provider must provide the department's liaison 30 days' advance written notice of change in the provider's name, address, tax identification number, group practice arrangement, business organization, or ownership.

(4) The provider, whose services are covered by Title XVIII program (Medicare), shall meet certification standards of Medicare except as provided otherwise in these rules.

(5) The provider shall render services to children and families served in the same scope, quality, duration, and method of delivery as to the general public, unless specifically limited by these regulations.

(6) Department employees may make referrals for children or families coming to the attention of the department for prevention or support services.

(7) The department is not obligated to assign referrals to a provider, and the provider is not obligated to accept referrals offered by the department for assignment.

(8) The provider shall not discriminate provision of service to children and families served or in employment of persons on grounds of race, creed, religion, color, sex, national origin, political ideas, marital status, age, or disability.

(9) The Child Welfare Prevention and Support Services Scope of Work, Procedures, and Child Welfare Prevention and Support Services Matrix Payment Fee Schedule and Catalog are uploaded to the department's Child and Family Services Division website: <https://dphhs.mt.gov/cfsd/titleivbavmatrix>.

(a) Notice of changes made to documents will be provided via email to providers by the department's liaison.

(10) Approved enrollment is effective upon execution of contract.

AUTH: 41-3-101, 41-3-131, 52-1-103, 52-2-111, MCA

IMP: 2-4-201, 41-3-101, 41-3-302, 42-1-102, 52-1-103, 52-2-111, MCA

NEW RULE III BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) The department will reimburse the provider for services provided in accordance with the Child Welfare Prevention and Support Services Matrix Fee Schedule and Catalog.

(2) The provider will comply with billing procedures set forth in the contract.

AUTH: 41-3-101, 41-3-131, 52-1-103, 52-2-111, MCA

IMP: 2-4-201, 41-3-101, 41-3-302, 42-1-102, 52-1-103, 52-2-111, MCA

NEW RULE IV PROVIDER EDUCATION (1) Except where termination has been imposed, the department may, in its discretion, direct a sanctioned provider to participate in a provider education program as a condition of continuing services.

(2) At the discretion of the department, provider education programs may include:

(a) instruction in claim form completion;

(b) instruction on use of the Child Welfare Prevention and Support Services Rate Matrix Fee Schedule and Catalog;

(c) instruction on statutes and regulations governing:

(i) Federal Child Access and Visitation Grant Program;

- (ii) Title IV-B Subpart 2;
- (iii) Title IV-E Social Security; and
- (iv) Child Abuse Prevention and Treatment Act (CAPTA).
- (d) instructions on coding or billing issues; and
- (e) other matters as determined by the department.

AUTH: 41-3-101, 41-3-131, 52-1-103, 52-2-111, MCA

IMP: 2-4-201, 41-3-101, 41-3-302, 42-1-102, 52-1-103, 52-2-111, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rules I through IV pertaining to child welfare prevention and support services contract enrollment and participation.

In an ongoing effort to inform and interact with the public regarding Title IV-B and Access and Visitation service contractual matters, the Child and Family Services Division (CFSD) in July of 2019 set forth a universal process by which interested and eligible parties are able to secure and execute a contract to provide services similar to the open enrollment process of Medicaid providers.

These open enrollment contracts took the place of the request for proposal (RFP) process. The contracts ensure clarity regarding contract scope of work, procedures, fees, and services. This shift was to expand services geographically, maximize providers, and increase the number of clients being served.

A rate matrix was developed for the contracts and rates set forth throughout the matrix were developed using rates from Medicaid, Casey Family Programs Catalog, Families First Prevention and Services Act, California Evidence Based Clearing House, and previous Montana Title IV-B and Access to Visitation services rates.

Service providers were notified in April of 2019 of the upcoming changes. At that time, stakeholders were given an opportunity to provide written feedback, and this feedback, when applicable, was utilized to inform and develop the existing matrix and contracts that have been in place since July 1, 2019. In addition, site visits with current providers and presentation to CFSD staff occurred in June of 2019 to support providers who were currently contracted with CFSD for a smooth transition into the open enrollment contracts, as well as to make outreach to new providers.

The purpose of these contracts is to assist in cases where it is deemed professional services are necessary by providing the following:

- a. assistance in enabling, developing, establishing, and expanding general practices;
- b. operate coordinated programs consisting of community-based family support services, family-based preservation services, reunification services, adoption promotion and support services, and access and visitation services;

- c. prevent child maltreatment among families who are at risk of entering the child welfare system through provision of supportive family and prevention services and assisting families already involved with the department;
- d. ensure child safety within the home and preserve intact families when the family's problems can be addressed effectively;
- e. address the problems of families whose children have been placed in foster care so that reunification may occur in a safe and stable manner;
- f. support adoptive families by providing support services as necessary so that they can make a lifetime commitment to their children; and
- g. establish and administer programs to support and facilitate noncustodial parents' access to and visitation of their children during intervention by CFSD.

Due to the shift from RFP contracts to open enrollment contracts, CFSD met with the procurement office and were encouraged to create rules regarding open enrollment and participation to ensure there is transparency and adequate notice given to providers when any changes are made to the rates, enrollment, and contracts procedures.

These open enrollment contracts encompass many funding streams for CFSD and other divisions of the department. The proposal is that the rules cover all Child Welfare Prevention and Support Services contracts.

New Rule I Provider Participation

New Rule I is proposed for clarification of services being provided including, but not limited to, prevention to both families, intervened on by the department, or at risk of entering the child welfare system, preservation, family support, and reunification.

This rule also requests contractors to comply with state and federal statutes, rules, and regulations, Montana statutes and rules governing licensure and certifications, and regulations and statutes to funding streams.

New Rule II Provider Enrollment and Agreements

New Rule II explains the process of how a provider would become a contractor, by entering into a Child Welfare Prevention and Support Services contract and identify the service array to be provided.

This rule also provides a description of how providers can obtain the Scope of Work, Procedures, and Matrix Payment Fee Schedule and Catalog, and a description of how notices of change made to these documents will be provided.

New Rule III Billing, Reimbursement, Claims Processing, and Payment

New Rule III describes how providers can bill and be reimbursed for services.

New Rule IV Provider Education

New Rule IV defines steps to be taken to support providers with education surrounding the funding sources, billing procedures, and scope of work.

Fiscal Impact

The department does not believe that the proposed new rules will have any fiscal impact.

5. The department intends to apply these new rules retroactively to July 1, 2019. There is no negative impact to the affected providers by applying the rule adoptions retroactively.

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

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

8. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 6 persons based on 60 providers.

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

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

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

/s/ Mark Prichard for Caroline Warne
Caroline Warne
Rule Reviewer

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

Certified to the Secretary of State June 16, 2020.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.34.3005 pertaining to) PROPOSED AMENDMENT
developmental disabilities program)
services manual updates)

TO: All Concerned Persons

1. On July 16, 2020, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/94888646522>, meeting ID: 948 8864 6522;

(b) Dial by telephone +1 646 558 8656, meeting ID: 948 8864 6522; find your local number: <https://mt-gov.zoom.us/u/alkjOK7EZ>.

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 July 10, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.34.3005 REIMBURSEMENT FOR SERVICES OF MEDICAID FUNDED DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES (HCBS) WAIVER PROGRAMS (1) remains the same.

(2) The department adopts and incorporates by this reference the rates of reimbursement for the delivery of services and items available through each Home and Community-Based Services Waiver Program as specified in the Montana Developmental Disabilities Program Services Manual, effective ~~July 1, 2019~~ July 1, 2020. A copy of the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at <http://dphhs.mt.gov/dsd/developmentaldisabilities/DDPratesinf>.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-201, 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.3005 pertaining to reimbursement rates in the Montana Developmental Disabilities Program Services Manual (manual).

The rule amendment would adopt and incorporate the updated version of the manual, dated July 1, 2020, to include changes in billing and reimbursement of services provided to persons who are recipients of developmental disabilities services through the Medicaid program.

Based on legislative appropriations in the 2019 legislative session, the Developmental Disabilities Program proposes to implement a 1.83% average provider rate increase. These rate adjustments are reflected in the proposed manual, dated July 1, 2020.

In addition to the provider rate increase, the department proposes the following additional changes to the manual:

1) Providing clarification of definition and/or billing codes or processes to minimize billing issues for several services in the Program Services Manual for the following services:

Adult Foster

Caregiver Training and Support

Community Transition Services

Companion

Day Supports & Activities

Environmental Modifications

Homemaker

Individual Goods and Services

Meals

PERS

Remote Monitoring Equipment

Residential Habilitation

Residential Training Supports

Respite

Retirement

Specialized Medical Equipment and Supplies

Supported Employment – Co Worker Support

Supported Employment – Follow Along

Supported Employment – Individual Employment Support

Supported Employment – Small Group Employment Support

Supports Brokerage

Transportation

2) Rewording some areas throughout to provide consistency in formatting and acronyms.

The proposed updated manual, dated July 1, 2020, can be found at <https://dphhs.mt.gov/dsd/developmentaldisabilities/ddpratesinf>.

Fiscal Impact

The 1.83% provider rate increase is projected to have the following fiscal impact:

\$906,663 General Fund increase
\$1,691,971 Federal Funds increase
\$2,598,634 Total Funds increase

The proposed rule amendment adopts and incorporates an updated manual, which would have an effective date retroactive to July 1, 2020.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: 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., July 24, 2020.

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

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

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

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

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable,

the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

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

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

/s/ Marie Matthews for Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 16, 2020.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.86.1802 pertaining to) PROPOSED AMENDMENT
durable medical equipment order and)
record requirement update)

TO: All Concerned Persons

1. On July 16, 2020, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/92888851955>, meeting ID: 928 8885 1955;

(b) Dial by telephone +1 406 444 9999 or +1 646 558 8656, meeting ID: 928 8885 1955; find your local number: <https://mt-gov.zoom.us/u/ad6KWsYnZL>; or

(c) Join by Skype for Business <https://mt-gov.zoom.us/skype/92888851955>.

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 July 10, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) remains the same.

(2) Reimbursement for prosthetic devices, durable medical equipment, and medical supplies will be limited to items included on the department's fee schedule delivered in the most appropriate and cost effective manner. Montana Medicaid adopts Medicare coverage criteria for Medicare covered durable medical equipment as outlined in the Region D Supplier Manual, local coverage determinations (LCDs) and national coverage determinations (NCDs) and as provided in ARM 37.85.105(3). For prosthetic devices, durable medical equipment, and medical supplies not covered by Medicare, coverage will be determined by the department and published on the department's fee schedule in accordance with ARM 37.86.1807. The items

must be medically necessary and prescribed in accordance with (2)(a) by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.

(a) ~~The prescription must indicate the diagnosis, the medical necessity, and projected length of need for prosthetic devices, durable medical equipment, and medical supplies~~ A prescription or order must include the member's name or Medicaid identification number; order date; general description of the item or HCPCS code or HCPCS code narrative, or a brand name and model number; quantity to be dispensed, if applicable; treating practitioner's name or national provider identifier; and treating practitioner's signature. The original prescription must be retained in accordance with the requirements of ARM 37.85.414.

Prescriptions may be transmitted by an authorized provider to the durable medical equipment provider by electronic means or pursuant to an oral prescription made by an individual practitioner and promptly reduced to hard copy by the durable medical equipment provider containing all information required. Prescriptions for durable medical equipment, prosthetics, and orthotics (DMEPOS) must follow the Medicare criteria outlined in chapters 3 and 4 of the Region D Medicare Supplier Manual as provided in ARM 37.85.105(3). A copy of the Region D Medicare Supplier Manual may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951. For items requiring prior authorization the provider must include a copy of the prescription when submitting the prior authorization request.

(i) remains the same.

(ii) If applicable, an order for durable medical equipment must list separately all concurrently ordered options, accessories, or additional features that are separately billed or require an upgrade code.

(iii) If applicable, an order for medical supplies must include all concurrently ordered supplies that are separately billed, listing each separately.

(b) through (7) remain the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.86.1802 pertaining to written order/prescription requirements to ensure that the department's requirements mirror Medicare's Standard Written Order (SWO) requirements, which the department routinely follows to offer consistency to providers.

Effective January 1, 2020, Medicare changed the Durable Medical Equipment, Prosthetic/Orthotics, and Supplies (DMEPOS) Order Requirements to help reduce supplier and provider burden. A detailed written order will no longer be required for durable medical equipment. Medicare has posted new standard written order requirements. Because Montana Healthcare Programs follow the same order/prescription requirements as Medicare for DMEPOS, as outlined in chapters 3

and 4 of the Region D Medicare Supplier Manual, the department proposes to update the requirements in ARM 37.86.1802 to ensure that the department's requirements mirror Medicare's SWO requirements to continue to offer consistency to providers.

The department has taken the necessary steps of researching and monitoring the exact Medicare DMEPOS order/prescription requirements to ensure that providers are given up-to-date criteria and policies. The department will update the Montana Healthcare Programs DMEPOS Provider Manual and post provider notices to the provider website and newsletters to ensure providers are informed of this significant change.

Fiscal Impact

This proposed rule amendment will not result in an impact to the general fund or affect federal funding.

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: 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., July 24, 2020.

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

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

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

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

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable,

the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

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

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

/s/ Marie Matthews for Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 16, 2020.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.79.326 pertaining to Healthy) PROPOSED AMENDMENT
Montana Kids dental benefits)

TO: All Concerned Persons

1. On July 16, 2020, at 11 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- (a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/98921624846>, meeting ID: 989 2162 4846;
- (b) Dial by telephone +1 406 444 9999 or +1 646 558 8656, meeting ID: 989 2162 4846; find your local number: <https://mt-gov.zoom.us/u/acR0xTOq9A>; or
- (c) Join by Skype for Business <https://mt-gov.zoom.us/skype/98921624846>.

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 July 10, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.79.326 DENTAL BENEFITS (1) remains the same.

(2) Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained in the American Dental Association Manual of Current Dental Terminology (CDT ~~2019~~ 2020).

(3) Effective ~~July 1, 2019~~ July 1, 2020, only the dental procedures listed at <http://dphhs.mt.gov/hmk.aspx> are benefits of the HMK coverage group Dental Program.

(4) through (6) remain the same.

AUTH: 53-4-1004, 53-4-1005, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1005, 53-4-1009, 53-4-1104, 53-4-1105, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.79.326 pertaining to Healthy Montana Kids dental benefits.

Healthy Montana Kids (HMK) Children's Health Insurance Program (CHIP) continues to follow the State of Montana Employee Dental Benefit as a benchmark for the HMK dental benefit as stated in the Centers for Medicare and Medicaid Services (CMS) approved CHIP State Plan. The department proposes to update dental procedure codes to reflect changes in the state employee benchmark plan, which will ensure the HMK plan stays current with the benchmark plan. The proposed changes will incorporate new procedure code updates, code additions and deletions, and changes to existing code descriptions. These updates are reflected in the 2020 American Dental Association Manual of Current Dental Terminology (CDT), which is incorporated by reference in the rule. The rule amendment also incorporates changes to the list of dental procedures published on the department website, posted as effective July 1, 2020.

Fiscal Impact

This proposed rule amendment will not result in an impact to the general fund or affect federal funding.

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: 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., July 24, 2020.

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

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

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

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

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

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

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

/s/ Marie Matthews for Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 16, 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
Rules I through III pertaining to) PROPOSED ADOPTION
flavored electronic smoking devices)

TO: All Concerned Persons

1. On July 16, 2020, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/91570526763>, meeting ID: 915 7052 6763;

(b) Dial by telephone +1 646 558 8656, meeting ID: 915 7052 6763; find your local number: <https://mt-gov.zoom.us/u/airGmYnn6>.

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 July 10, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

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

(1) "Electronic smoking device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. An electronic smoking device includes any component, part, or accessory of the device, including, but not limited to, flavor enhancers, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. An electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(2) "Flavored electronic smoking device" means an electronic smoking device that imparts a taste or smell other than the taste or smell of tobacco. This

includes but is not limited to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or the taste or smell of any fruit, candy, dessert, alcoholic beverage, herb, or spice. An electronic smoking device shall be presumed to be a flavored electronic smoking device if a retailer, manufacturer, or a retailer or manufacturer's agent or employee has:

(a) made a public statement or claim that the product or device imparts a taste or smell other than the taste or smell of tobacco;

(b) used text and/or images on the electronic smoking device's labeling or packaging to explicitly or implicitly indicate that the electronic smoking device imparts a taste or smell other than tobacco; or

(c) taken action directed to consumers that would be reasonably expected to cause consumers to believe the electronic smoking device imparts a taste or smell other than tobacco.

(3) "Person" means a natural person, company, corporation, firm, partnership, organization, or other legal entity.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

NEW RULE II DISTRIBUTION OF FLAVORED ELECTRONIC SMOKING DEVICES (1) A person shall not sell, offer for sale (e.g., display on a retailer's physical premises that is accessible to the public), give, market, advertise, or otherwise distribute flavored electronic smoking devices to persons within this state.

(2) A person shall not transport within this state flavored electronic smoking devices intended for sale or distribution within this state by any person.

(3) These rules apply with equal force regardless of whether a retailer or reseller is physically located in this state or utilizes online or other remote sale methods that are intended to deliver flavored electronic smoking devices to this state.

(4) These rules do not apply to a "marijuana infused product" as defined under 50-46-302(13), MCA.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

NEW RULE III SEVERABILITY (1) If any rule or subsection of these rules, in whole or in part, is found to be invalid by a court of competent jurisdiction, such decision will not affect the validity of the remaining portion of these rules.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

4. Statement of Reasonable Necessity

The Department of Public Health and Human Services (department) is proposing adoption of these rules in response to the epidemic of youth e-cigarette or electronic smoking device use (vaping). The rules prohibit selling, offering for sale, marketing,

advertising, or otherwise distributing flavored electronic smoking devices to persons in Montana. This would thereby remove from Montana commerce the flavored electronic smoking devices that have been targeting youth users and inflicting grievous health effects on Montana's youth. The department is proposing these rules pursuant to its authority under 50-1-202, MCA, to adopt and enforce rules regarding conditions of public health importance.

The rate of youth usage of e-cigarettes has increased at an astronomical rate and shows no signs of abating. Both the United States Surgeon General and Food and Drug Administration (FDA) have declared youth vaping a national epidemic.¹ National youth vaping rates increased 78% from 2017 to 2018.² In 2019, more than one in four (27.5%) high schoolers were current vapers.³ The number of middle and high school students vaping rose from 3.6 million in 2018 to 5.4 million in 2019, representing an increase of about 1.8 million youth.⁴ The 2019 National Youth Tobacco Survey data show that 34.2% of current high school vaping users and 18.0% of current middle school vaping users use electronic smoking devices on 20 days or more per month and the Monitoring the Future Study found that in 2019, 11.7% of high school seniors vape nearly daily, suggesting that more users are becoming dependent on these products.⁵

Montana historically has ranked above the national average in youth vaping rates. In 2019, 58.3% of high school-aged youth reported ever trying vaping, 30.2% reported vaping in the past month, and 12.7% reported frequent use (at least 20 days in the prior 30-day period). Legislative efforts such as adding vapor products to the Youth Access to Tobacco Products Control Act (Mont. Code Ann. § 16-11-301 et seq.) seem to have failed to check youth vaping growth in the state. An estimated 22,500 Montana middle and high schoolers are currently vaping.⁶ Additionally, the rate of high school students reporting frequent vaping has grown 243% since 2017.⁷

Youth vaping presents a condition of public health importance in Montana because it exposes youth to numerous adverse health effects. According to the Surgeon General, "E-cigarette use poses a significant and avoidable health risk to young people in the United States. Besides increasing the possibility of addiction and long-term harm to brain development and respiratory health, e-cigarette use is associated with the use of other tobacco products that can do even more damage to the body."⁸ Nicotine is a highly addictive drug that can have lasting damaging effects on adolescent brain development; the brain keeps developing until about age 25. In particular, nicotine use can harm the parts of the adolescent brain responsible for attention, learning, mood, and impulse control.⁹ Nicotine can also prime the brain for addiction to other drugs."¹⁰ Because of these risks, the Surgeon General has concluded that, "The use of products containing nicotine in any form among youth, including in e-cigarettes, is unsafe."¹¹

The effect of nicotine on developing brains may prime not just nicotine addiction, but greater vulnerability to addiction to other drugs as well. Research indicates that nicotine exposure occurring as a result of vaping may induce epigenetic changes that sensitize the brain to other drugs and prime it for future substance abuse.¹² A

meta-analysis of 21 prior studies also revealed that young people who vaped were also 3.5 times more likely to use marijuana.¹³

Differentiating between nicotine-containing products and non-nicotine-containing products could create difficulties enforcing a flavored e-cigarette rule. It is difficult to determine whether a product contains nicotine. Some e-cigarettes that have been marketed as non-nicotine-containing products have been found to contain nicotine.¹⁴ While manufacturers sometimes label nicotine content on their product, the labeling is not always accurate. A rule that excludes non-nicotine-containing products would give further incentive to manufacturers to mislabel the nicotine content of a product.

Additionally, non-nicotine-containing e-cigarettes pose their own risks to children's health. While e-cigarette aerosol contains fewer chemicals and toxins compared to cigarette smoke, it can still contain harmful and potentially harmful chemicals, including formaldehyde, acrolein, volatile organic compounds like toluene, tobacco-specific nitrosamines, and metals like nickel and lead.¹⁵

Flavorings in e-cigarettes may pose unique harms. According to the Surgeon General while some of the flavorings used in e-cigarettes are generally recognized as safe for ingestion as food, the health effects of their inhalation are generally unknown and some of the flavorings found in e-cigarettes have been shown to cause serious lung disease when inhaled.¹⁶ According to the FDA, "Flavorings that are safe for use in food may become toxic when these chemicals are heated and inhaled. Some have been shown to be harmful to the lungs."¹⁷ There are over 15,000 flavors available on the marketplace and none of them have been reviewed by the FDA.¹⁸

Including non-nicotine-containing products will protect children from misleading manufacturer claims and potentially harmful chemicals.

Vaping has been shown to increase the likelihood of smoking cigarettes among young people, raising concerns that e-cigarettes are acting as an entry to nicotine products that may lead to use of more dangerous products such as combustible tobacco. According to a study published in 2019, youths nationwide are four times more likely to try cigarettes and three times more likely to currently use cigarettes if they previously vaped. The study also estimated that vaping is likely responsible for 22% of new ever cigarette use (trying a cigarette) and 15% of current cigarette use for the same group. Researchers estimate that this translates to over 43,000 current youth cigarette smokers who might not have become smokers without e-cigarettes.¹⁹ The National Academies of Science, Engineering and Medicine (NASEM) released a comprehensive report concluding that there was substantial evidence that vaping increases risk of ever using cigarettes among youth and young adults.²⁰

In proposing these rules to address the epidemic of youth vaping and the harms such products inherently pose to youth, the department was guided by data strongly indicating that flavors are a top reason behind youth initiation of vaping. Youth cite flavors as a top reason for vaping. Of youth e-cigarette users, 70.3% say they use

e-cigarettes "because they come in flavors I like."²¹ In addition, the FDA found that 97% of current youth e-cigarette users age 12 to 17 reported that they had used a flavored e-cigarette in the past month.²² E-cigarettes are available in a multitude of flavors, many of which are similar to candy, including flavors such as Cotton Candy, Slammin Pink Watermelon, Strawberry Rolls, and Cherry Skittles. Many of these products are also packaged in a manner that appeal to youth by closely resembling the packaging of candy.

The proposed rules are reasonably necessary to address the epidemic of youth vaping and its associated adverse health effects identified above, which represent a public health emergency and condition of public health importance in Montana. The proposed rules are designed to remove a primary pathway to youth initiation of e-cigarette use by preventing the sale of flavored e-cigarettes in Montana to reduce the number of youth who use e-cigarettes and their exposure to the harms inherent with the use of such products.

5. Small Business Impact Statement

Pursuant to 2-4-111, MCA, the department has analyzed whether the proposed rules will significantly and directly impact small businesses. As set forth below, the department has concluded the rules will significantly and directly impact small businesses who sell flavored e-cigarettes.

The businesses that must comply with this rule are any retailers or distributors who sell or distribute e-cigarettes to persons located in Montana. The department does not collect or have information that would enable it to determine the number of licensees that meet the definition of a small business under 2-4-102(13), MCA. For the purpose of this analysis, the department presumes a significant portion of the licensed entities meet the definition of a small business.

The probable and significant direct effects of the proposed rules on small businesses that sell or distribute flavored e-cigarettes will be from lost sales of flavored e-cigarettes. The department does not collect or have information that would enable it to determine what percentage of e-cigarette sales consist of flavored products. Additionally, the degree of impact on any particular small business selling flavored e-cigarettes is dependent on the type of small business. For example, the proposed rules logically will have a greater impact on small business vape shops that exclusively sell e-cigarettes than small business convenience stores and gas stations that sell a much wider variety of products. Another variable impacting the degree of lost flavored e-cigarette sales is the number of persons who formerly used flavored e-cigarettes that will transition to non-flavored e-cigarettes, which will at least partially offset the lost revenue stream. Given the number of variables and lack of available data, the department cannot provide a dollar estimate as to the impact of the proposed rules on small businesses. This measure is not a total ban on e-cigarettes; it only prohibits the sale of the flavors that are most attractive to children. Vape shops will continue to sell tobacco-flavored e-cigarettes, e-cigarette devices, and components. Adult e-cigarette users are likely to switch to tobacco-flavored e-

cigarettes if they are the only product on the market. Until e-cigarette manufacturer Juul entered the market and pushed the market to its flavored products, tobacco-flavored e-cigarettes were the single most widely used flavor.²³

The department considered several alternatives to a rule restricting the sale of flavored e-cigarettes. First, the department considered taking no action. This option was rejected as it would allow the rise in youth usage to continue unabated and would do nothing to achieve the goal of reducing youth usage of e-cigarettes. Second, the department considered a rule restricting the sale of all e-cigarettes. This option would achieve the purpose of the proposed rules but was rejected for several reasons. The approach would be costlier for small businesses. Additionally, the approach would prohibit adults from using any e-cigarettes and could lead to an increased use of combustible tobacco by existing e-cigarette users. Third, the department considered regulating only closed systems. Youth are already using a variety of e-cigarettes, not just closed systems, so it is not effective to regulate only closed systems. Data from the 2019 National Youth Tobacco Survey, published in Journal of the American Medical Association, found that after Juul, Suorin and Smok are the most popular e-cigarette devices among high school students. Among high school e-cigarette users, 7.8% reported using Smok and 3.1% reported using Suorin.²⁴ These prevalence estimates are solely from write-in responses, since Suorin and Smok were not listed as options in the questionnaire, so actual use rates are likely higher. Both Suorin and Smok are open pod systems. Unlike Juul, which sells pre-filled, closed cartridges, Suorin and Smok devices come with empty, refillable pods which can be filled with e-liquids of varying nicotine strengths and flavors. Youth who are already addicted to these products will simply switch to whichever product is left on the market.

Further, while youth e-cigarette use skyrocketed after pod devices like Juul came on the market, we also saw youth use rates as high as 16% before the emergence of pod devices. Some of the most appealing flavors to children, like gummy bear and cotton candy, are used in open systems. With the epidemic on our hands and newer, easier-to-use open system devices, it's likely that youth will easily switch to open system devices, especially since open systems are becoming increasingly kid-friendly. There are open systems that look just like Juul, are easy to refill, and are becoming more popular among children. The Trump Administration's policy that only regulated closed systems exempted kid-friendly disposable products. These products are cheap, easy to use, have high levels of nicotine, come in a wide range of flavors, and are easy to conceal. Anecdotal evidence has shown these products have become increasingly popular with youth. We must take all of these products off the market now to avoid worsening the epidemic as youth switch to whatever product is left available for them.

Fourth, the department considered exempting small businesses (vape shops) from the proposed rules. Nationally, about two-thirds of tenth-graders say that it's easy to get vaping devices and e-liquids.²⁵ In Montana, 18.9% of high school e-cigarette users got their e-cigarette product from a store such as a convenience store, supermarket, discount store, gas station, or vape shop.²⁶ If flavored products are

allowed for sale anywhere, children will be able to purchase them. Children will still obtain these products from older social sources, and by asking others to buy for them. Vape shops sell thousands of kid-friendly flavors. In fact, many of the most egregious versions of kid-friendly flavors, like cotton candy and gummy bear, are only available in vape shops and online. Exempting vape shops will keep the most youth-appealing flavors readily available.

There is also no evidence that adults need flavored e-cigarettes. No flavored e-cigarette has been approved or even reviewed for smoking cessation purposes by the Food and Drug Administration. Public health authorities in the U.S., including the Centers for Disease Control and Prevention and the Surgeon General, have found that there is not enough evidence to recommend e-cigarettes for tobacco cessation. E-cigarette companies may claim that adult smokers are their target audience, but that is not who is using the product. E-cigarettes have become increasingly popular among youth and young adults, while there has been no significant uptake among older adults.

A comprehensive rule that restricts the sale of all flavored e-cigarettes in all retailers is the best way to reduce youth access and protect Montana's youth. The state is facing a public health crisis. With the skyrocketing rate of youth e-cigarette use, protecting our children's health should be the top priority.

6. Fiscal Impact

The anticipated financial impact to retailers and distributors of flavored e-cigarettes is described in the above Small Business Impact Statement. The proposed rules are not anticipated to have a significant fiscal impact on the department.

7. Planned Next Steps and Contact Information

a. The department intends for these proposed rules to be effective upon date of adoption.

b. 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., July 24, 2020.

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

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

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

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

/s/ Peter Bovingdon

Peter Bovingdon
Rule Reviewer

/s/ Sheila Hogan

Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 16, 2020.

¹ FDA, Statement from FDA Commissioner Scott Gottlieb, M.D., on new steps to address epidemic of youth e-cigarette use, <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-steps-address-epidemic-youth-e-cigarette-use> (last updated Sept. 12, 2018); Office of the Surgeon General, *Surgeon General's Advisory on E-cigarette Use Among Youth*, <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf> (last accessed Jun. 12, 2020).

² FDA, *Youth Tobacco Use: Results from the National Youth Tobacco Survey*, <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey> (last updated Nov. 18, 2019).

³ Cullen, KA, et al., "e-Cigarette Use Among Youth in the United States, 2019" *JAMA*, published online Nov. 5, 2019, <https://jamanetwork.com/journals/jama/fullarticle/2755265>.

⁴ Centers for Disease Control, *Youth and Tobacco Use*, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm (last accessed Jun. 12, 2020).

⁵ Truth Initiative, *E-cigarettes: Facts, Stats, and Regulations*, <https://truthinitiative.org/research-resources/emerging-tobacco-products/e-cigarettes-facts-stats-and-regulations> (last accessed Jun. 12, 2020).

⁶ Montana IBIS Population Estimates <http://ibis.mt.gov/query/selection/pop/PopSelection.html>, MT Office of Public Instruction, 2019 Youth Risk Behavior Survey

⁷ Montana Office of Public Instruction, 2019 Youth Risk Behavior Survey, https://opi.mt.gov/Portals/182/Page%20Files/YRBS/2019YRBS/2019_MT_YRBS_FullReport.pdf?ver=2019-08-23-083248-820 (last accessed Jun. 12, 2020).

⁸ HHS, *Know the Risks: E-Cigarettes & Young People*, <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html> (last accessed Jun. 12, 2020).

⁹ HHS, *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*, CDC, Office of Smoking and Health (OSH), 2014, https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm#report. See also: CDC Office on Smoking and Health, "Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults," March 2019.

¹⁰ U.S. Department of Health and Human Services (HHS), *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016, https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf.

¹¹ See endnote 10.

¹² Menglu Yuan, Sarah J Cross, Sandra E Loughlin, Frances M Leslie, Nicotine and the Adolescent Brain, 593.16 J Physiology, 3397–3412 (2015).

¹³ Chadi, N., et al., "Association Between Electronic Cigarette Use and Marijuana Use Among Adolescents and Young Adults," JAMA Pediatrics, 173(10), 2019.

¹⁴ Willett JG, et al., "Recognition, use and perceptions of JUUL among youth and young adults," *Tobacco Control*, 28:115-116, published online April 18, 2018.

¹⁵ Cheng, T, "Chemical Evaluation of Electronic Cigarettes," *Tobacco Control* 23:ii11-ii17, May 2014, http://tobaccocontrol.bmj.com/content/23/suppl_2/ii11.full. Goniewicz, ML, et al., "Levels of selected carcinogens and toxicants in vapour from electronic cigarettes," *Tobacco Control* 23(2):133-9, March 6, 2013. Williams, M, et al., "Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol," *PlosOne*, 8(3), March 2013. See also Williams, M, "Electronic Cigarette Liquids and Vapors: Is It Harmless Water Vapor," presented October 3, 2013 at TRDRP Electronic Cigarette Webinar, <https://www.trdrp.org/files/e-cigarettes/williams-slides.pdf>. NASEM, *Public Health Consequences of E-Cigarettes*, 2018.

¹⁶ See endnote 10.

¹⁷ Gottlieb, S and Abernethy, A. *Understanding the Health Impact and Dangers of Smoke and 'Vapor'*. FDA Voices: Perspectives from FDA Leadership and Experts.

<https://www.fda.gov/news-events/fda-voices-perspectives-fda-leadership-and-experts/understanding-health-impact-and-dangers-smoke-and-vapor>.

¹⁸ Zhu, S-H, et al., "Evolution of Electronic Cigarette Brands from 2013-2014 to 2016-2017: Analysis of Brand Websites," *Journal of Medical Internet Research*, 20(3), published online March 12, 2018.

¹⁹ See endnote 10.

²⁰ National Academies of Sciences, Engineering, and Medicine. 2018. *Public health consequences of e-cigarettes*. Washington, DC: The National Academies Press. <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>.

²¹ FDA, "Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance," March 13, 2019, <https://www.fda.gov/media/121384/download>.

²² See endnote 21.

²³ Romberg, et al., "Patterns of nicotine concentrations in electronic cigarettes sold in the United States, 2013-2018," *Drug and Alcohol Dependence*, 203:1-7, Oct. 2019. And NHIS 2014-2018.

²⁴ Cullen, KA, et al., "e-Cigarette Use Among Youth in the United States, 2019" *JAMA*, published online November 5, 2019.

²⁵ Monitoring the Future, *Trends in Availability of Drugs as Perceived by 10th Graders*, 2019, <http://monitoringthefuture.org/data/19data/19drtbl16.pdf>.

²⁶ See endnote 7.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
42.2.316 pertaining to alternative)	
county business office hours	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. The Department of Revenue proposes to repeal the above-stated rule.

2. The Department of Revenue 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 5:00 p.m. on July 3, 2020, to advise us of the nature of the accommodation you need. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov.

3. The department proposes to repeal the following rule:

42.2.316 ALTERNATIVE COUNTY BUSINESS OFFICE HOURS

AUTH: 2-16-117, 15-1-201, MCA
IMP: 2-16-117, MCA

REASONABLE NECESSITY: During the 2017 legislative session, the department's Property Assessment Division suffered significant budget cuts for the 2018-2019 biennium as a result of the passage of House Bill 2 and Senate Bill 261. The budget cuts were magnified with the triggers in Senate Bill 261 when the state experienced revenue shortfalls combined with high expenditures. Due to these cuts, the department had to close over half of its county offices. Since the office closures, the department has made significant changes to operations to continue to provide services and support to our local government partners and the public. The department is open for the transaction of business for all counties 8 a.m. to 5 p.m. Monday through Friday through all of our field and regional offices. The field offices' core hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, unless otherwise posted in advance, in which case, a phone number for service will be available.

Because the department is not operating local offices with alternative business office hours, as described in 2-16-117, MCA, the department proposes to repeal ARM 42.2.316.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received

no later than 5:00 p.m., July 27, 2020.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person named in #4 no later than 5:00 p.m., July 27, 2020.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The number of hearing requests necessary for the department to conduct a public hearing is 25, because it is less than ten percent of the number of Montana taxpayers in the counties that have experienced department office closures.

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 different mailing preference is noted in the request. Such written request may be mailed or emailed to the contact person in #4.

8. An electronic copy of this notice is available through the Secretary of State's web site at sosmt.gov/arm/register.

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

/s/ Todd Olson

Todd Olson
Rule Reviewer

/s/ Gene Walborn

Gene Walborn
Director of Revenue

Certified to the Secretary of State June 16, 2020.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 2.43.3502 pertaining to the)
investment policy statement for the)
Defined Contribution Retirement Plan)
and ARM 2.43.5102 pertaining to the)
investment policy statement for the)
457(b) Deferred Compensation Plan)

TO: All Concerned Persons

1. On February 28, 2020, the Public Employees' Retirement Board published MAR Notice No. 2-43-594 pertaining to the proposed amendment of the above-stated rules at page 347 of the 2020 Montana Administrative Register, Issue Number 4.

2. The Public Employees' Retirement Board has amended the above-stated rules as proposed.

3. No comments or testimony were received.

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

/s/ Sheena Wilson
Sheena Wilson
President
Public Employees' Retirement Board

Certified to the Secretary of State June 16, 2020.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of a new) NOTICE OF ADOPTION
subchapter codifying New Rules I)
through X for technologically enhanced) (SOLID WASTE MANAGEMENT)
naturally occurring 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 proposed adoption of the above-referenced rule at page 1239 of the 2019 Montana Administrative Register, Issue Number 16. On January 31, 2020, the department published a supplemental notice of proposed adoption at page 159 of the 2020 Montana Administrative Register, Issue Number 2.

2. The department has adopted the following rules as proposed: New Rules V (17.50.1807), VII (17.50.1811), VIII (17.50.1812), and IX (17.50.1813).

3. The department has adopted the following rules as proposed, but with the following changes from the original proposal (or supplemental notice as noted below), new matter underlined, deleted matter interlined:

NEW RULE I (17.50.1801) PURPOSE AND APPLICABILITY (1) through (6) remain as proposed.

(7) The department incorporates by reference "Requirements for the Characterization of TENORM Wastes," Montana DEQ – Solid Waste Program (Revised ~~August 2019~~ June 2020). Copies of that document are available for public inspection at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901, or by contacting the department at (406) 444-5300.

NEW RULE II (17.50.1802) DEFINITIONS (1) through (7) remain as proposed.

(8) "Filter media" means a porous material used to filter solids from fluids. This includes, but is not limited to, green anthracite, filter socks, water treatment socks, and activated charcoal.

(9) remains as proposed.

~~(10) "Hazardous waste" has the meaning specified in 75-10-403, MCA.~~

(11) through (24) remain as proposed but are renumbered to (10) through (23).

~~(25)(24) "Rem" or "roentgen equivalent man" is a unit of measure that quantifies the amount of energy deposited by ionizing radiation deposited in human tissue modified by the effects of the specific type of radiation~~ the dose unit representing the amount of energy absorbed in human tissue, the distribution of the

energy, and the sensitivity of the whole body or individual organs to radiation.

(26) through (30) remain as proposed but are renumbered (25) through (29).

~~(31)~~(30) "Spill" means the accidental or unintentional release of TENORM waste during transport or onsite at the TENORM waste management system in an area not designated for disposal.

(32) through (40) remain as proposed but are renumbered (31) through (39).

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

(42) and (43) remain as proposed but are renumbered (40) and (41).

NEW RULE III (17.50.1803) TENORM WASTE MANAGEMENT SYSTEM LIMITS AND RESTRICTIONS (1) through (3)(a)(iii) remain as proposed in the supplemental notice.

(iv) U.S. Department of Transportation number associated with the truck and company;

(iv) through (xii) remain as proposed in the supplemental notice but are renumbered (v) through (xiii).

~~(xiii)~~(xiv) waste characterization results, which may be provided on associated documents.

(b) through (9) remain as proposed in the supplemental notice.

NEW RULE IV (17.50.1806) TENORM WASTE MANAGEMENT SYSTEM LICENSE AND APPLICATION REQUIREMENTS (1) through (2)(d)(iv) remain as proposed.

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

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

and

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

NEW RULE VI (17.50.1808) OPERATION AND MAINTENANCE

(1) through (1)(d) remain as proposed in the supplemental notice.

(i) comply with "Requirements for the Characterization of TENORM Wastes" Montana DEQ – Solid Waste Program (Revised ~~August 2019~~ June 2020); and

(ii) through (5) remain as proposed in the supplemental notice.

NEW RULE X (17.50.1816) TENORM SPILL REPORTING REQUIREMENTS (1) and (2) remain as proposed.

(3) A person who spills TENORM waste shall, ~~no later than~~ as soon as practicable but in no case later than 24 hours after the spill occurs, report the spill to the Montana Disaster and Emergency Services at (406) 324-4777 and to the county coordinator of disaster and emergency services for the county where the spill occurs.

(4) through (6) remain as proposed.

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

COMMENT NO. 1: A commenter would like to see a direct reference in the introduction to the rules that speaks to Montana's constitutional right to a clean and healthful environment.

RESPONSE: These rules are promulgated under the authority vested in the department by the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, MCA. Section 75-10-202, MCA, contains legislative intent, policy, and findings that speak to the constitutional provisions raised by the commenter. It would be duplicative and not reasonably necessary to effectuate the purpose of the statute to repeat that statutory language in rule. Nevertheless, the department is mindful of its charge to protect a clean and healthful environment as guaranteed to our citizens by our State Constitution.

COMMENT NO. 2: Commenters stated that the department should not allow radioactive waste in Missoula, Glendive, or anywhere in Montana.

RESPONSE: The department appreciates the comment. TENORM is not waste from nuclear energy, weaponry, or medical industries that are measured in units called Curie. TENORM, in this rulemaking, is measured in picocuries (pCi). One picocurie (pCi) is 1 trillionth of a Curie. NORM stands for "naturally occurring radioactive material." It is a substance that naturally contains one or more radioactive isotopes, also called radionuclides. NORM is present at low levels in soils and rocks. TENORM is NORM that has been concentrated as a result of human activities, such as through manufacturing, mineral extraction, or water processing. Radionuclides are also present in some foods and common household items, including bananas at 4 pCi/gm, Brazil nuts at 6 picocuries per gram (pCi/g), cat litter at 5 pCi/g, coffee at 27 pCi/g, granite countertops at 27 pCi/g, and ammonia phosphate fertilizer at 123 pCi/g.

Furthermore, TENORM is not federal Nuclear Regulatory Commission (NRC) licensed material. NRC-licensed material consists of source material, special nuclear material, or byproduct material and must be received, possessed, used, transferred, or disposed of only under a general or specific license issued by NRC.

In the absence of federal TENORM regulations, states have jurisdiction and the authority for promulgating TENORM regulations. Therefore, the department is proposing these rules to ensure that this waste stream is regulated appropriately to protect human health and the environment.

COMMENT NO 3: Over 400 commenters supported the amended proposed rules set forth in the supplemental notice. Commenters thanked the department for listening to the concerns of Montanans and taking action to address them.

RESPONSE: The department appreciates the comments.

COMMENT NO. 4: One commenter supports the supplemental notice, but said it is important that regulations do not violate Montana law, including 50-79-102, MCA: "It is the purpose of this chapter to provide a program ... (2) to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that

duplication of regulation may be minimized;"

RESPONSE: The department appreciates the comment. Section 50-79-102, MCA, applies to the regulation of nuclear waste and, therefore, is not directly applicable to these rules. Nevertheless, the department intends to work with federal, state, and local governments to form partnerships in dealing with TENORM waste management issues to minimize the duplication of regulation and to provide consistency with other regulatory entities where appropriate.

In the supplemental notice, one of the reasons the department proposed to keep the upper concentration limit at 50 pCi/g was to be consistent with neighboring states. The department received approximately 730 public comments requesting that the department keep the concentration limit at 50 pCi/g and noting the different concentration limit in the August 2019 proposal and rules promulgated by North Dakota. Since publication of the 2019 notice, the department became aware of neighboring states initiating rulemaking limiting the upper concentration to 50 pCi/g. Having an acceptance limit consistent with neighboring states discourages Montana from being targeted for disposal of higher concentration waste from those states. Having an upper limit of 50 pCi/g also 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 2019 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. The department will work with stakeholders, neighboring states, the Environmental Quality Council, and interested legislators to coordinate efforts with neighboring states and to address issues, such as 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.

COMMENT NO. 5: A commenter suggested that, under NEW RULE I(3) the owner or operator of an existing waste management system licensed to accept TENORM waste should be required to comply with these rules within 6 months instead of the 12 months proposed.

RESPONSE: The department appreciates the comment but has kept the 12-month compliance timeline as originally proposed. Due to the additional requirements that waste management systems will need to implement, the department believes that 12 months is an appropriate timeframe for compliance and department approval.

COMMENT NO. 6: Commenters support that existing facilities must comply with the proposed rules.

RESPONSE: The department appreciates the comment.

COMMENT NO. 7: A commenter suggested revising the definition of contaminated soil in NEW RULE II(3) so that it is not limited to contamination from "organic compounds such as petroleum hydrocarbons." The commenter suggested that this definition should focus on TENORM contamination above a certain threshold, such as 5 pCi/g.

RESPONSE: The department appreciates the comment but does not believe the change is warranted. Petroleum hydrocarbons are only used as an example in the definition. The term "contaminated soil" is only referenced in NEW RULE VIII for closure and post-closure care to ensure that contaminated or stained soil is properly excavated or removed. The department intends the meaning of the term to be consistent with how the term is used by other programs within the department and to match the definition in ARM 17.50.403.

COMMENT NO. 8: A commenter suggested revising NEW RULE II(10) to read "Hazardous Waste has the meaning specified in 75-10-403, MCA, and in ARM 17.53.301(1) and 17.53.501(1)."

RESPONSE: In reviewing this comment, the department determined that the term "hazardous waste" is not used in the proposed rules. Defining this term is therefore unnecessary, and the department has removed the definition from the final rules.

COMMENT NO. 9: A commenter suggested revising NEW RULE II(25) to read "Rem or roentgen equivalent man is a unit of measurement that quantifies the amount of energy deposited by ionizing radiation deposited in human tissue modified by the effects of the specific type of radiation."

RESPONSE: The department agrees that the proposed definition was hard to follow and has revised the definition for clarity.

COMMENT NO. 10: A commenter stated that the definition of "Rem" in NEW RULE II(25) is hard to follow, and suggested it be changed to read, "a unit of measure that correlates the amount of radiation absorbed by an object or person to the biological effect of the dose."

RESPONSE: The department agrees that the proposed definition was hard to follow and has revised the definition for clarity. See response NO. 9.

COMMENT NO. 11: A commenter stated that there may be a typographical error in (26) and it should read x-ray rather than x-radiation.

RESPONSE: The department appreciates the comment, but it was not a typographical error. X-radiation is an accepted term used in the field of health physics and other disciplines.

COMMENT NO. 12: A commenter suggested revising the definition of "Spill" in NEW RULE II(31) to read, "the accidental or unintentional release of TENORM waste during transport or onsite at the TENORM waste management system in an area not designated for disposal."

RESPONSE: The department agrees with this comment and has made the change to be consistent with the terminology used in the remainder of the rules.

COMMENT NO. 13: Several comments suggested that drill cuttings and mud should be included in the definition of TENORM under NEW RULE II(33).

RESPONSE: The department disagrees. The definition of TENORM includes materials with increased radionuclide concentrations above location-

specific background levels as a result of past or present human practices. Materials that are exposed to the accessible environment as a result of human activities, but that have not been concentrated, are not considered TENORM. For example, excavated soil that is removed for the construction of a basement, is not TENORM because the soil is just being moved and not concentrated. In a similar manner, materials brought up to the surface by drilling operations but not concentrated, including drill cuttings and mud, do not meet the definition of TENORM. Six years of data collected from department-licensed solid waste facilities have shown drill cuttings to be significantly below 5 pCi/g combined radium. In addition, the department has found from recent testing of mine tailings, soil samples from petroleum release sites, granulated activated carbon from chlorinated solvent soil vapor extraction treatment filters, soil samples from petroleum tank excavation sites, and water treatment plant sludge from an historic mining site, that the concentration of combined radium in these materials is well below the regulatory threshold of 5 pCi/g.

COMMENT NO. 14: A commenter asked how benzene, toluene, hydrocarbons, and other VOCs will be monitored if drill cuttings and mud are not included in the definition of TENORM.

RESPONSE: Although not TENORM, drill cuttings and mud entering a TENORM waste management system will have to meet the acceptance criteria for a Class II management system under ARM Title 17, chapter 50, subchapter 11. The sampling requirements will be based upon the type of waste stream accepted. Drill cuttings and mud from hydraulic fracking wells are typically contaminated with hydrocarbons and therefore would need to be tested for benzene, toluene, hydrocarbons, and other volatile organic compounds.

COMMENT NO. 15: A commenter asked if drill cuttings and mud can be disposed of in a TENORM waste management system and, if so, whether they are subject to the same daily cover requirements as TENORM waste.

RESPONSE: Drill cuttings and mud may be accepted at a TENORM waste management system. If accepted for disposal, the drill cuttings and mud will be required to be covered as per the approved operational requirements for the facility and cannot be used as cover.

COMMENT NO. 16: A commenter asked if other states define drill cuttings and mud as TENORM and, if so, whether other states require testing.

RESPONSE: The department has not identified any neighboring state that defines drill cuttings and mud as TENORM. Neighboring states sampling requirements vary. For Montana's sampling requirements, see response NO. 15.

COMMENT NO. 17: A commenter supported the proposed definition of TENORM in NEW RULE II(33).

RESPONSE: The department appreciates the comment.

COMMENT NO. 18: A commenter suggested revising the definition of "transport" in NEW RULE II(39) to mean the movement of TENORM wastes from

the point of generation to any intermediate points and finally to the point of ultimate storage, treatment, recycling, recovery, or disposal. The commenter suggested the department strike the reference to the definition in ARM 17.50.403 because that definition only refers to ultimate "storage or disposal" locations, omitting situations where the ultimate transportation point may be treatment, recycling, or recovery facilities.

RESPONSE: The department appreciates the comment. The department is leaving the definition as proposed to be consistent with the definition in ARM 17.50.403(58). The department may consider this issue in a future rulemaking.

COMMENT NO. 19: A commenter suggested removing the definition of "unit" in NEW RULE II(41) because it is confused with unit of measurement.

RESPONSE: The department agrees with this comment and has removed this definition from the final rules to avoid confusion.

COMMENT NO. 20: A commenter noted that in the 4th paragraph of the reason section on page 1246 discussing the 5 pCi/g regulatory threshold, the reference to "New Rule I(3)" should be corrected to read "New Rule I(2)".

RESPONSE: The department agrees that the reference should be to New Rule I(2), as that is the section that includes the 5 pCi/g combined radium threshold for regulation of TENORM.

COMMENT NO. 21: One commenter discussed how the term "filter media" generally refers to filtering agents that are contained within a filtering system such as sand, anthracite, greensand, etc., which are common in drinking water treatment systems. Filter socks are the actual filters, which do not contain any anthracite or other additive media that specifically attract radionuclides or contaminants. The fabric that forms the sock is the only means of filtration. The commenter suggested changing references to filter media to instead read "filters (or filter socks) and other filter media."

RESPONSE: The department intends the term "filter media" to include all filtering materials, including but not limited to devices such as filter socks. The department has modified the definition of "filter media" in the final rules to provide clarity.

COMMENT NO. 22: The department received many comments during the first public comment period requesting that the department change the gate screening level for TENORM waste in NEW RULE III(1)(a) of the original proposal notice from 200 to 100 microrentgen per hour (μ R/hr), excluding background. Many commenters stated that Montana's rules should match North Dakota's gate screening limit, as having a higher gate screening limit than that of neighboring states encourages generators and transporters to bring wastes generated in neighboring states into Montana for disposal. The department also heard from several commenters that, generally, 200 μ R/hr is more dangerous than 100 μ R/hr, and that the higher limit puts landfill workers and neighboring residents at risk. At least one commenter also stated that a gate screening limit of 200 μ R/hr is

inconsistent with an acceptance limit of 200 pCi/g.

RESPONSE: The department appreciates these comments. In the supplemental notice published January 31, 2020, the department amended the proposed gate screening limit, establishing a uniform limit of 100 μ R/hr, excluding background, for all incoming loads of TENORM waste. The department made this change in conjunction with changes to the proposed waste acceptance limit in NEW RULE III(1)(b). The department is adopting NEW RULE III(1)(a) as proposed in the supplemental notice, which the department believes addresses the concerns raised by these comments. Please see the reason statement for NEW RULE III in the supplemental notice.

COMMENT NO. 23: Over 400 commenters supported the amended proposed rule changing the gate screening level from 200 microrentgen per hour (μ R/hr) to 100 μ R/hr.

RESPONSE: The department appreciates the comments.

COMMENT NO. 24: One commenter recommended using 200 microrentgen per hour (μ R/hr) as the upper gate screening limit rather than 100 μ R/hr. The commenter agrees with and supports the rationale provided by the department on pages 1249-1250 of the 8/23/19 proposed rulemaking, stating it demonstrates that the 200 μ R/hr limit is a safe level that is protective of human health for both TENORM waste and TENORM surface-contaminated objects. The commenter stated that the analysis previously provided by the department on those pages shows that the estimated exposure to a facility worker (i.e., the maximally exposed individuals) from materials at 200 μ R/hr would be less than 20 percent of the annual public dose limit of 100 mrem/yr and less than 5 percent of the hourly public dose limit of 2.0 mrem/hr (i.e., the department's worker exposure estimates from the proposed maximum gate screening level of 200 μ R/hr were only 19.6 mrem/yr and 0.098 mrem/hr). The commenter argues that there is nothing in the supplemental notice that refutes those prior valid estimates or that justifies reducing the gate screening level to 100 μ R/hr for protection of the facility workers or the public.

RESPONSE: The department appreciates the comment but disagrees with the commenter's suggested upper gate screening limit. In the supplemental notice, the department determined that a uniform gate screening level of 100 μ R/hr was reasonably necessary both in conjunction with the changed waste acceptance limit in NEW RULE III(1)(b) and to eliminate the uncertainty of having separate gate screening limits based on the type of TENORM waste in each load.

The previously proposed screening level of 200 μ R/hr was based on a higher maximum concentration limit. The 100 μ R/hr screening level is consistent with a combined radium concentration in bulk materials of 50 pCi/g at full equilibrium with its decay products. The actual exposure rate from a shipment of bulk TENORM would vary widely depending on the "age" of the radium in the material. Radium-226 itself does not have a significant gamma signature. It is the short-lived decay products of Ra-226 (Pb-214 and Bi-214) that result in significant gamma exposure rates. In nature, the decay products are in equilibrium with the parent, Ra-226.

However, when Ra-226 is chemically separated as, for example, in a filtration process, the gamma exposure rate per pCi/g Ra-226 is much lower than it would be if the decay products are present. It takes about four days after chemical separation for the decay products to build in to 50 percent of equilibrium and approximately three weeks for the decay products to reach full equilibrium, i.e., equal activity concentration, with the parent Ra-226. If a load with freshly separated Ra-226 at 50 pCi/g is received at a disposal site, it would not trigger the screening level. However, if a load of material containing Ra-226 at the maximum equilibrium state were to be received, it would just barely meet the 100 μ R/hr screening level. The determination as to whether a load is acceptable, i.e., meets the 50 pCi/g limit, is based on the radiochemical analysis results stated in the waste profile, not the exposure rate screening level.

As noted above, the 200 μ R/hr gate screening level was based on a maximum combined radium concentration in a single load of 200 pCi/g. The gate screening level at 50 pCi/g would be significantly lower at a maximum of 100 μ R/hr. This screening level allows some leeway for Ra-226 that is in equilibrium with its short-lived decay products. The 100 μ R/hr gate screening level for loads of contaminated equipment is reasonable because there is not a practical way to assess the radium concentrations in equipment. The only way of ensuring that such loads would not present a risk to a person is to limit the exposure rate.

With regard to the gate screening level applying to an average exposure rate or the maximum exposure rate measured, there is significant leeway in the gate screening level of 100 μ R/hr that using the maximum exposure rate is appropriate. On average, a load of radium at 50 pCi/g would most likely have an external exposure rate of about 50 μ R/hr depending on the age of the Ra-226 (i.e., degree of equilibrium with the gamma emitting decay products). The external exposure rate on the exterior surfaces of the vehicle would vary depending on the material and potential shielding by materials with lower radium concentrations. Therefore, the gate screening level allows for such variability. As noted previously, the primary determinant of whether the load is acceptable for disposal at the TENORM facility is the waste profile, not the screening level. The screening level just provides some assurance that the load does not include materials with significantly higher radium concentrations.

COMMENT NO. 25: The department received many comments during the first public comment period requesting that the proposed waste acceptance limit of 200 pCi/g in NEW RULE III(1)(b) be lowered to 50 pCi/g and that the requirement to maintain a "running average" of 50 pCi/g in the TENORM waste unit be removed. Commenters expressed concern that the department would not be able to adequately monitor and enforce the 200 pCi/g upper acceptance limit or the "rolling average" of 50 pCi/g in the TENORM waste unit, noting in particular the lack of any standardized method for calculating the in-place average concentration of TENORM waste in a TENORM waste unit. Many commenters stated that Montana's rules should match North Dakota's acceptance limit. The commenters expressed concern that having a higher acceptance limit than neighboring states would encourage generators and transporters to bring wastes generated in nearby states into

Montana for disposal. Some commenters also expressed concern for worker exposure to waste with greater radioactivity if individual loads of up to 200 pCi/g were allowed to be disposed in a TENORM waste management system.

RESPONSE: The department appreciates these comments. In the supplemental notice published January 31, 2020, the department amended the proposed waste acceptance limit, establishing a static acceptance limit of 50 pCi/g of combined radium Ra-226 and Ra-228 for TENORM waste entering the system. In conjunction with the new acceptance limit, the department has removed the requirement to maintain a separate rolling concentration average with the TENORM waste unit. The department is adopting NEW RULE III(1)(b) as proposed in the supplemental notice, which the department believes addresses the concerns raised by these comments. Please see the reason statement for NEW RULE III in the supplemental notice.

COMMENT NO. 26: Over 400 commenters supported the amended proposal eliminating the rolling 50 pCi/g average in place concentration limit and 200 pCi/g upper concentration limit. The commenters supported replacing it with an upper static concentration limit of 50 pCi/g.

RESPONSE: The department appreciates the comments.

COMMENT NO. 27: A commenter disagrees with the amended proposed rule lowering the maximum allowable concentration from 200 pCi/g to 50 pCi/g. The commenter asserts that regulations are often full of complex issues to be considered and addressed, but the industry and the department are both well equipped to address the complexities of having 200 pCi/g as an upper concentration limit while maintaining a 50 pCi/g average in place. The commenter stated that the 200 pCi/g maximum is protective of the public and the landfill worker (i.e., the maximally exposed individual) and below the dose limits recommended for the public. The commenter argued that it is the overall average concentration within the waste unit that ultimately determines the annual dose to the public and to facility workers. Therefore, allowing a maximum concentration of 200 pCi/g to accommodate the anticipated periodic variability in waste streams, while procedurally maintaining the required ≤ 50 pCi/g average concentration, remains protective regardless of what the allowable upper limit is for periodic individual loads.

The commenter also stated that the second reason given in the supplemental notice for proposing to change the maximum allowable concentration from 200 pCi/g to 50 pCi/g appears to be based simply on a desire for consistency with what neighboring states may decide to adopt as their standards. The commenter recommended that the department remain committed to the science-based approach previously proposed rather than being influenced by unnecessarily conservative neighboring state policies that do not provide the necessary flexibility to accommodate the variability of TENORM wastes and to ensure availability of appropriate management and disposal options and discourage illegal dumping.

RESPONSE: The department appreciates the comment but has kept the waste acceptance limit as proposed in the supplemental notice. The majority of oil and gas TENORM waste will meet the 50 pCi/g limit, and thus will be acceptable for disposal at a TENORM facility under the Montana regulations. The decision to limit

the maximum Ra-226 concentration to 50 pCi/g is based on two primary considerations: (1) simplicity of compliance and enforcement, and (2) compatibility with surrounding states. However, there are additional radiation safety considerations associated with allowing Ra-226 concentrations up to 200 pCi/g. While the risk assessment was based on an average concentration of 50 pCi/g, it did not account for significant fluctuations in the concentrations to which a single worker might be exposed. Another concern is the consistency of Ra-226 concentrations within a load. A load with materials of variable Ra-226 concentrations, "hot spots," that might not be identified in the waste profile could expose workers to elevated radiation exposures. Requiring a maximum average Ra-226 concentration in each load would minimize that risk.

It is imperative that the regulations be easy to implement from the standpoint of both the TENORM landfill operator and state regulatory authorities. A variable concentration limit would require a relatively sophisticated tracking system and a method for ensuring that the limit on the average concentration is never exceeded. By contrast, a static upper acceptance limit of 50 pCi/g makes it easier for the department to verify and enforce these rules by reducing the number of variables associated with maintaining an average concentration within the TENORM waste unit. In addition, removing the variable acceptance limit streamlines facility recordkeeping and the determination as to whether an individual load of TENORM waste may be accepted. Generators and transporters of TENORM waste also have the added certainty that TENORM waste meeting the acceptance levels under (1)(a) and (1)(b) may be accepted at a facility.

States surrounding Montana have either enacted, proposed, or are in the process of proposing regulations limiting the maximum combined radium to 50 pCi/g. Having a wide variety in the state disposal limits for radium would create a confusing system that could encourage cross-state disposal requiring longer transit distance with the attendant non-radiological risks. Until the federal government proposes and implements TENORM regulations for waste disposal, it is advisable for the states to have consistent regulatory systems.

COMMENT NO. 28: Another commenter did not support the decision to lower the limits in the TENORM rules. The commenter expressed concern that the supplemental notice is based on politics and not science. The commenter believes the original proposal to allow up to 200 pCi/g was sound and justified. The commenter expressed concern that the new limits could cause closure of existing operations or prevent new planned waste systems from being constructed. The commenter expressed concern about negatively impacting the opportunity for jobs and that oilfield waste is not an issue that is critical or severe in radiation.

RESPONSE: The department does not anticipate any changes to TENORM waste management system models based upon the adoption of the rules because the waste acceptance limit in the newly adopted rules matches the department's existing guidance setting 50 pCi/g as the upper concentration limit. For further discussion regarding the 50 pCi/g concentration limit, see response NO. 27.

COMMENT NO. 29: One commenter pointed out that the natural radiation

present in some clay and shale soils already exceeds the department's proposed waste acceptance limit.

RESPONSE: The department recognizes that soils in Eastern Montana and other parts of the state can be naturally high in radioactivity. The waste acceptance limit in the adopted rules excludes background radiation for the gate screening level and at the boundary at the TENORM waste management system. Therefore, the rules take into account where a TENORM waste management system is located in an area with naturally high background radiation. These rules do not account for background levels at the point of generation (offsite and not at the TENORM waste management system) because TENORM waste is concentrated material that represents the radioactivity signature of the waste.

COMMENT NO. 30: One commenter stated that if levels rise above 50 picocuries and 100 microrentgen, it should automatically trigger closure.

RESPONSE: The department does not agree that automatic closure is warranted. TENORM waste above 50 picocuries per gram and loads above 100 microrentgen are required to be rejected under the rules. The department has the enforcement authority to ensure rigorous and timely compliance with solid waste rules. This enforcement authority includes requiring corrective action to address violations of these rules and could ultimately lead to closure of the TENORM waste management system if determined necessary to protect human health and the environment.

COMMENT NO. 31: One commenter said to stop the trucks at the gate rather than allow them into the facility and, if the radioactivity spikes, stop the trucks completely.

RESPONSE: The department agrees with the comment. The rules prohibit TENORM waste from entering a TENORM waste management system if it exceeds the concentration or gate screening limits in NEW RULE III.

COMMENT NO. 32: A commenter agreed with the decision to remove the NEW RULE III(5) and (6) random inspection requirements specific to incoming loads of filter media, given that NEW RULE VI(1)(n) will still require random inspections of incoming loads of all types of TENORM waste.

RESPONSE: The department appreciates the comment.

COMMENT NO. 33: A commenter suggested specifying how frequently landfill operators need to check the boundary monitors (is it daily, weekly, or monthly?) as well as specifying how frequently landfill operators need to report these measurements to the department regarding the modified requirements for when the TEDE limit is exceeded.

RESPONSE: The TENORM waste management system must have provisions developed by a health physicist for continuous monitoring of ionizing radiation dose at the licensed boundary in their Operation and Maintenance plan in accordance with NEW RULE VI(1)(l). The monitoring must demonstrate the dose a hypothetical person would receive if the person were at the boundary continuously with no shielding for a year. The TENORM waste management system must report

these readings to the department quarterly as set forth in NEW RULE VI(2)(b)(iv). In addition, NEW RULE VI(1)(i)(i) requires annual calibration for radiation detection and monitoring instruments done by a laboratory licensed by an agreement state or NRC, and NEW RULE VI(1)(i)(ii) requires daily source and background check procedures for radiation detection and monitoring equipment.

COMMENT NO. 34: A commenter supported the modified requirements for filter media as long as filter media will indeed be required to be randomly inspected under the existing draft of rules.

RESPONSE: The department appreciates the comment. Filter media is required to be randomly inspected under these rules.

COMMENT NO. 35: One commenter thinks there should be a "big fine" if the landfill does not notify the department as required in NEW RULE III(6).

RESPONSE: Penalties for violation of these rules are prescribed by the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, MCA. A facility's failure to notify the department of a boundary limit exceedance would constitute a violation of these rules subjecting the facility to administrative and/or civil penalties. Penalties assessed must be determined in accordance with the penalty factors in 75-1-1001, MCA.

COMMENT NO. 36: Commenters stated that the department should change the gate screening level for TENORM surface-contaminated objects from 100 microroentgen per hour ($\mu\text{R/hr}$) to 200, excluding background radiation in NEW RULE III(2).

RESPONSE: The department disagrees. See response NO. 24.

COMMENT NO. 37: A commenter suggested that, for TENORM surface-contaminated objects, the gate screening criteria be expressed as an "average" exposure limit, consistent with the characterization method specified for such objects in the "Requirements for the Characterization of TENORM Waste" document.

RESPONSE: The department appreciates the comment, but it has not adopted the suggested changes. The department believes it is sufficient that the requirements for gate screening, including the requirements for calculating an average exposure limit within an individual load, are detailed in the waste characterization document, "Requirements for the Characterization of TENORM Wastes," Montana DEQ – Solid Waste Program (revised June 2020), that is incorporated by reference at NEW RULE I(7).

COMMENT NO. 38: A commenter expressed concern regarding funding for the department to conduct adequate field inspections in eastern Montana.

RESPONSE: The department agrees that the large distances in Montana are challenging for the department to maintain a permanent presence across the state. However, the department does routine field inspections statewide to provide regulatory oversight and provide compliance assistance.

COMMENT NO. 39: Commenters recommended immediately notifying

neighboring landowners and public of groundwater exceedances or other violations. Commenters also recommended notifying landowners, the public, counties, local health departments, newspaper, and law enforcement in the event of any breach, spill, or other calamity. One commenter also requested notification of not just neighboring landowners, but also notifying occupants of neighboring properties, in case the neighboring landowner is not residing at the property.

RESPONSE: The department appreciates the comments. Public notification is required under ARM Title 17, chapter 50, subchapter 13, when groundwater contamination occurs at any solid waste management system in Montana. The final rules incorporate those same public notification requirements in NEW RULE VII. Furthermore, under NEW RULE X, any spill of TENORM waste is required to be reported to state and local Disaster Emergency Services.

COMMENT NO. 40: Commenters recommended that the rules require a TENORM waste management system stop accepting waste when a limit is exceeded, and stop until in compliance and contamination is evaluated and addressed.

RESPONSE: The department appreciates the comment and believes it has been addressed by the amendments to the proposed rules set forth in the supplemental notice. In the department's amended proposal, which is being adopted, a TENORM waste management system that exceeds the boundary limit of 100 mrem/y must immediately stop accepting waste and must submit to the department a corrective action plan that prohibits the acceptance of TENORM waste until the corrective measures have remedied the exceedance.

COMMENT NO. 41: Commenters supported the requirement in the amended proposed rules that a TENORM waste management system stop accepting waste if the Total Effective Dose Equivalent (TEDE) is exceeded at the boundary.

RESPONSE: The department appreciates the comments.

COMMENT NO. 42: One commenter questioned the need for immediate cessation as required in NEW RULE III(6)(a), as the TEDE limit is a long-term based standard. The commenter suggested the rule be amended to read, "cease acceptance of TENORM waste until resolved, if determined necessary by the department."

RESPONSE: The department disagrees. The department is requiring that the TENORM waste management system not accept TENORM waste until the exceedance has been remedied. This ensures that the corrective actions are able to remedy the exceedance. It also allows the department to require the facility to implement closure and post-closure plans, if necessary, to protect human health and the environment.

COMMENT NO. 43: A commenter recommended changing the notification requirement in NEW RULE III(6)(b) from "within 24 hours" to "within 1 business day" to ensure access to department staff for reporting.

RESPONSE: The department is adopting 24 hours because it 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.

COMMENT NO. 44: Commenters support the requirement that all loads entering the facility undergo gate screening for exposure and the protocols for rejecting loads.

RESPONSE: The department appreciates the comments.

COMMENT NO. 45: A commenter recommended that NEW RULE III(3)(a) be amended to make clear that information required to be included on the manifest may be included on associated documents rather than the manifest itself. Specifically, the commenter is concerned that waste characterization documents will be difficult to include on the manifest itself, given the level of detail involved.

RESPONSE: The department agrees. The department has made this change to avoid confusion and provide clarity.

COMMENT NO. 46: The department received numerous comments requesting the rules institute tonnage limits at each TENORM waste management system, such as not exceeding 25,000 tons per year or 3,000 tons in a single month.

RESPONSE: The department disagrees. Each TENORM waste management system must have a specific design and a site-specific Operation and Maintenance (O&M) Plan, which will dictate the maximum annual tonnage allowed at the facility. Site designs and O&M plans are approved by the department on a case by case basis. Also, there is not a direct correlation between tonnage received at a facility and the NRC recommended dose limit of 100 mrem per year at the boundary due to operational practices.

COMMENT NO. 47: A commenter suggested that if the average radioactivity concentration within the landfill is discovered to have been exceeded or if contamination is discovered in ground water monitoring wells, the department should be required to make a determination within 15 days as to whether the landfill should stop accepting waste for a specific time period in order to allow for corrective action/remediation and/or follow closure or post-closure care.

RESPONSE: The department appreciates the comment and believes it has been addressed by the amendments to the proposed rules set forth in the supplemental notice. See response NO. 40.

COMMENT NO. 48: Commenters suggested that the TENORM waste management system notify the department within 24 hours and provide immediate public notice if 100 mrem at the boundary is exceeded.

RESPONSE: The department appreciates the comment and has addressed the 24-hour notification in the amendments to the proposed rules set forth in the supplemental notice. The department is not requiring public notification because

every boundary limit exceedance is not necessarily an emergency situation. However, this does not preclude the department from providing public notification if there is an immediate threat to human health and the environment. In addition, the facility must immediately stop accepting TENORM waste if the boundary limit is exceeded. Furthermore, the rules require corrective actions to remedy the exceedances. The department may require the TENORM waste management system to follow closure and post-closure plans, if necessary, to protect human health and the environment. See responses NO. 39 and NO. 40.

COMMENT NO. 49: A commenter suggested making the boundary limit 25 mrem per year.

RESPONSE: The department does not agree with the comment. The dose limit for members of the public for operating licensed facilities under Nuclear Regulatory Commission (NRC) regulations is 100 mrem per year (mrem/y) excluding background and medical exposures [10 CFR 20.1301(a)(1)]. This is an internationally accepted annual dose limit for members of the public for planned exposure situations such as operation of a licensed TENORM landfill. In contrast to most other licensed or permitted operations involving the use or disposal of radioactive materials, the TENORM landfill worker is considered a member of the public rather than a "radiation worker" (the maximum allowable dose to a radiation worker is 5,000 mrem/y). Radiation doses must be kept as low as reasonably achievable taking into account the purpose for the activity (ALARA). Nuclear Regulatory Commission regulations in 10 CFR Part 20 are not applicable to TENORM because naturally occurring radioactive materials are not addressed in the Atomic Energy Act. It is up to individual states to develop TENORM regulations. However, it is reasonable for the department to be consistent with NRC regulations and the International Atomic Energy Association's standard for the public dose of 100 mrem/y.

COMMENT NO. 50: Commenters support the requirement that facilities must monitor for Total Effective Dose Equivalent at the facility boundary.

RESPONSE: The department appreciates the comments.

COMMENT NO. 51: Several commenters stated that the department should be notified immediately as well as county disaster services when the boundary limits have been exceeded.

RESPONSE: The department appreciates the comments but has not made the proposed change. The department would work with local entities as appropriate if the boundary limit is exceeded but requiring facility notification of local disaster and emergency services would not be appropriate, as a boundary limit exceedance is not necessarily an emergency situation. Regarding notification to the department, 24 hours is the maximum time limit in which a boundary limit exceedance must be reported, but the facility must immediately stop accepting TENORM waste if the boundary limit is exceeded. Furthermore, the rules require corrective actions to remedy the exceedance and the department may require the TENORM waste management system to follow closure and post-closure plans, if necessary, to protect human health and the environment.

COMMENT NO. 52: A commenter suggested that the information on the manifest required under NEW RULE III(3)(a) should include the U.S. Department of Transportation number that goes with that truck and that company.

RESPONSE: The department agrees with the comment and has incorporated this change into the final rules. Requiring the transporter's U.S. Department of Transportation number on the manifest will allow for easier tracking of the waste by the department.

COMMENT NO. 53: A commenter pointed out that, in New Rule IV(2)(d), the subparagraphs currently numbered (2)(d)(v), (vi), and (vii) should be renumbered as (2)(e), (f), and (g). The plans required under those subsections are not related to the material that should be included in the detailed site plan under (2)(d), but instead are separate plans required to be included in the application under (2).

RESPONSE: The department agrees with the comment and has incorporated the change into the final rules to provide clarity and to avoid confusion.

COMMENT NO. 54: Commenters suggested that the rules should have provisions for public notice regarding TENORM license applications both in the county newspaper of record as well as statewide newspapers. Commenters also requested personal notice to surrounding landowners and county commissioners.

RESPONSE: Under existing rules and practice, the department issues public notice and provides opportunity for the public to review proposed licensing decisions as well as the department's draft environmental review document disclosing potential impacts to human health and the environment from the proposed licensing action. In addition, the Montana Solid Waste Management Act requires that the department notify the local health officer within 15 days of receipt of an application, but it does not provide for public notice of the department's receipt of an application. Because changes to the application are often needed to comply with solid waste rules, the department does not believe it is warranted to include a requirement for public notice of the department's initial receipt of an application.

COMMENT NO. 55: Commenters expressed that liners should be required to match the thickness required by North Dakota's administrative rules. Under North Dakota rule, liners must include at least 3 feet of re-compacted clay with hydraulic conductivity not to exceed 1×10^{-7} cm per second overlain with at least a 60 mil flexible membrane liner.

RESPONSE: The department does not agree with this comment. The reason that EPA allowed for state specific solid waste management regulatory framework is because of the diversity of site conditions across the country. Montana is a prime example of why current administrative rules require that a facility be designed to ensure that facility operations do not result in contamination of the uppermost aquifer. EPA also prescribed a standard liner design that is applicable nationwide for waste management systems that is protective of the environment. The department utilizes EPA's prescribed liner requirements as the minimum standard for Montana solid waste systems. While it makes sense to prescribe

composite liner systems with hydraulic conductivity standards in certain areas, the same environmental protection and additional costs are not warranted in others. Nevertheless, each facility design is evaluated based upon the site-specific characteristics. The rules require Class II facilities be designed to prevent contamination of the uppermost aquifer and provide for the use of the prescriptive liner design or an equivalent alternative design based upon site-specific characteristics. In some cases that might be 100 mil, 80 mil, or other depending upon the hydrogeologic conditions.

COMMENT NO. 56: A commenter suggested that the Engineer of Record for the facility should oversee and certify the installation of the liner, including testing of the compacted clay bedding and verification that the liner has been properly welded/installed and covered with suitable cover fill to be protective of liner integrity.

RESPONSE: The department appreciates the comment. Liner design construction and testing follow standard engineering practices that have been carried out by Montana solid waste systems over the last 25 years. Prior to the placement of waste in a newly constructed landfill, the department conducts a thorough review of the installation. ARM 17.50.1205(5) requires submittal to the department for approval, a construction quality control (CQC) and construction quality assurance (CQA) plan describing procedures that conform with the department-approved design plans. ARM 17.50.1205(6) requires, within 60 days after construction of a Class II or Class IV landfill unit is completed, that the owner or operator submit to the department for approval a final CQC and CQA report that describes, at a minimum, construction activities and deviations, and conformance with the approved CQC/CQA plan. ARM 17.50.1205(7) requires that the owner or operator submit a certification, by an independent Montana licensed professional engineer, that the project was constructed according to the CQC/CQA plan. These rules are incorporated into the TENORM rules at NEW RULE I(4) and NEW RULE V(1)(b).

COMMENT NO. 57: Commenters expressed concern with sharp and large, bulky objects that have the potential to puncture the liner. Some commenters also expressed concern regarding the landfill being allowed to define its own safety protocols for dealing with sharp and large, bulky objects.

RESPONSE: The department appreciate the comments. Concerns regarding sharp, heavy, and bulky materials damaging a liner system are addressed under NEW RULE VI. All Class II waste management systems, including TENORM waste management systems, must include in their Operation and Maintenance (O&M) Plan procedures to protect the integrity of the liner from objects that could compromise it, such as large, bulky items. The department does not want to be overly prescriptive for O&M plans. Each waste management system and site is unique and should be evaluated on a case by case basis. O&M plan requirements currently in place ensure that the integrity of a liner system will be maintained and must be approved by the department.

COMMENT NO. 58: Commenters suggested testing storm water ponds for radionuclides.

RESPONSE: NEW RULE VI(4) requires monitoring for possible contamination in storm water ponds. The department is proposing to require the owner or operator to test storm water for constituents or parameters based on the waste stream. Owners and operators would be required to obtain a storm water permit from the department's Water Protection Bureau, which regulates discharges of storm water, and to develop a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP would include best management practices, quarterly inspections, and sampling after significant storm events. TENORM waste management systems must divert storm water and prevent it from commingling with waste. The department is proposing in NEW RULE VI(5) to require an owner or operator to take corrective action measures if there are exceedances of limits in the storm water ponds to protect human health and the environment. The department is also proposing to require the owner or operator to notify the department's Water Protection Bureau of any exceedances because this bureau is responsible for the management of storm water.

COMMENT NO. 59: Commenters suggested requiring corrective actions if radioactivity is at high concentrations in storm water ponds.

RESPONSE: The department agrees. If radionuclides or any other constituent deemed necessary for testing is found to be at levels unsafe for human health and the environment corrective actions would be taken. NEW RULE VI(5) requires corrective actions to be taken if monitoring detects an exceedance of a constituent or parameter.

COMMENT NO. 60: The department received comments expressing concern with the siting of TENORM waste management systems, specifically with regard to the environmental conditions in Eastern Montana as well as the potential for TENORM waste management systems to be located near residential areas.

RESPONSE: Requirements for site selection are outlined in ARM Title 17, chapter 50, subchapter 10, which is incorporated into these rules at NEW RULE V(1). These site selection requirements include restrictions on siting a landfill near airports, floodplains, wetlands, fault areas, seismic areas, unstable areas, and other location restrictions. Subchapter 10 also contains requirements to protect public and private drinking water supply systems, sensitive hydrogeological environments, and endangered or threatened plants, fish, and wildlife from potential negative impacts associated with solid waste disposal. In addition, site selection must comply with applicable local zoning, and a certification from the relevant zoning authority is required to be submitted with the application for a TENORM waste management system license.

COMMENT NO. 61: A commenter recommended testing storm water within 3 days of any precipitation over 1/2 inch of moisture.

RESPONSE: The department disagrees. Testing storm water within 3 days of any precipitation over 1/2 inch of moisture is too prescriptive. The storm water ponds must be designed to handle a 100-year/24-hour storm event. The precipitation amount that triggers monitoring will be based upon the exceedance of

the site-specific precipitation amount for the designed event. Precipitation amounts are determined by local weather data from the national weather service. In addition, the storm water pond must be consistent with the requirements of the storm water permit approved by the department's Water Protection Bureau. TENORM waste management systems are required to work with the department's Water Protection Bureau to obtain a storm water permit and develop a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP must include best management practices, quarterly inspections, and sampling after significant storm events. TENORM waste management systems would be required to divert storm water away from waste and prevent it from commingling with waste.

COMMENT NO. 62: A commenter recommended requiring storm water be tested quarterly and after major precipitation and run-off events for radioactivity, diesel range organics, and other constituents as included in the April 2019 pre-publication draft of the rules (NEW RULE VI).

RESPONSE: See responses NO. 58 and 59.

COMMENT NO. 63: Commenters suggested testing storm water for other constituents, not just radionuclides, but also the host of volatile organic compounds on a regular basis.

RESPONSE: See response NO. 58.

COMMENT NO. 64: A commenter wants the department to require storm water retention ponds to be lined with a composite liner, as included in the April 2019 pre-publication draft of the rules that were shared with the TENORM workgroup.

RESPONSE: The department does not agree with the comment. After further discussion and technical input from the department's Water Protection Bureau, the department determined that requiring storm water ponds to be lined in these rules is not appropriate. Requiring a liner is contrary to current state of practice for designing storm water ponds. Storm water ponds are designed to facilitate the settlement of fine sediments or other particulates, which are transported during high velocity flows over the surface of the ground. Storm water ponds are also designed to recharge the ground water by permeating through the soil. TENORM waste management systems must be designed to divert storm water from contacting the waste. Therefore, storm water ponds only receive high velocity flows in contact with land without any waste on it or from direct rainfall or precipitation events. Lined ponds often have difficulty with siltation, which can lead to reduction in capacity and possibility of compromising the capacity of the storm water pond.

COMMENT NO. 65: Several commenters want requirements to monitor leachate quarterly for quality and quantity, and after major precipitation events. The commenters also want leachate to be removed if leachate pond levels approach 30 cm in the leachate sump and require the removal and off-site disposal of excess leachate rather than recirculate it. Commenters also want to see leachate managed at a minimum of one-foot total head volume, or less, on the landfill's protective liner.

RESPONSE: Leachate monitoring and management for Class II landfills are already required in Montana's solid waste rules. See ARM 17.50.1204 and 17.50.1205. These requirements are incorporated into the TENORM rules at NEW RULE V. Based upon the department's experience with Class II landfills, these rules are adequate in addressing leachate monitoring and management. Class II landfills may remove leachate and properly dispose of it off-site.

COMMENT NO. 66: Commenters want the department to make reports available to public, state, and nearby landowners.

RESPONSE: Reports are publicly available. Any person may visit the department's website (<https://deq.mt.gov/Public>) to request public records or may contact the department at (406) 444-5300 for assistance with this process.

COMMENT NO. 67: A commenter stated that money should be set aside to maintain future leachate maintenance.

RESPONSE: Engineering design and Operation and Maintenance plans include budgeting for the upkeep and maintenance of the leachate management systems. Financial assurance would also encompass future leachate maintenance costs. Future leachate maintenance would also be covered under the TENORM waste management system's Closure and Post Closure Care plan.

COMMENT NO. 68: A commenter wants leachate to be tested for radon, radium 226, radium 228, alpha particle activity, uranium, and benzene. The commenter also wants the department to specify how frequently leachate should be tested and by whom.

RESPONSE: The department disagrees with the comments. See response NO. 65.

COMMENT NO. 69: A commenter stated that the rules need to protect drinking water.

RESPONSE: The department acknowledges the comment. Solid waste regulations are designed to protect the uppermost aquifer. Pursuant to ARM 17.50.1009, which is incorporated into these rules at NEW RULES I(4) and V(1), facilities must be located in a manner that does not allow the discharge of pollutants in excess of state standards for the protection of state waters, public water supply systems, or private water supply systems. The department has a Drinking Water Program to monitor and oversee required public drinking water system sampling. The Drinking Water Program inspects drinking water systems and provides technical and compliance assistance to ensure clean water. Public water systems are required to test for maximum contaminant levels for radiological contaminants. If exceedances are detected, public notification is required. In addition, the department has a Source Water Assessment and Protection Program. The department conducts source water assessments that analyze existing and potential threats to the drinking water of public drinking water supplies.

COMMENT NO. 70: A commenter suggested that the department coordinate

siting facilities with local government and establish local government partnerships.

RESPONSE: Requirements for site selection and design criteria are outlined in ARM Title 17 chapter 50, subchapter 10 and subchapter 11, which are incorporated into these rules at NEW RULES V(1) and VI(1). Under existing rules and practice, the department issues public notice and provides opportunity to review proposed licensing decisions as well as the department's draft environmental review document disclosing potential impacts to human health and the environment from the proposed licensing action. Licensing for solid waste management systems includes local government involvement as required in 75-10-222 and 75-10-223, MCA. Cities, towns and counties use various mechanisms to guide land uses, including but not limited to local zoning ordinances, growth management plans, and land use plans. The department intends to work with other states, federal, and local governments to form partnerships in dealing with TENORM waste management issues to minimize the duplication of regulation and to provide consistency with other regulatory entities where appropriate.

COMMENT NO. 71: Several commenters stated that TENORM waste management sites should be at clay or shale soil sites. A commenter stated that TENORM waste management systems should be located in areas where potential for groundwater contamination is low. One commenter stated that there should be a 50-foot separation between the liner and the water table, and a TENORM waste management system should have a lateral distance of 1,000 feet from any perennial surface water. A commenter also stated that when siting a TENORM waste management system seasonal fluctuations of the water table and its highest level should be considered.

RESPONSE: Requirements for site selection and design criteria are outlined in ARM Title 17 chapter 50, subchapter 10 and subchapter 11, which are incorporated into these rules at NEW RULES V(1) and VI(1). ARM 17.50.1009, incorporated into these rules at NEW RULE V(1)(a), requires the siting of a landfill to include adequate separation of wastes from underlying ground water or adjacent surface water, and the owner or operator of the facility is required to demonstrate that the facility is located in a manner that does not allow the discharge of pollutants in excess of state standards for the protection of state waters, public water supply systems, or private water supply systems.

COMMENT NO. 72: Commenters stated that inspections done by the department should be unannounced.

RESPONSE: Pursuant to 75-10-205, MCA, the department has continuing authority and responsibility to inspect solid waste management systems. Inspections may be conducted only during reasonable hours and only after presentation of appropriate credentials. The department is not required to announce when it will be conducting an inspection.

COMMENT NO. 73: Commenters stated that inspections done by the department should be done monthly or to the maximum extent possible.

RESPONSE: The department appreciates these comments. The frequency of inspections at solid waste management systems varies. Most facilities will be

inspected at a minimum two times annually or more frequently based upon compliance status of the facility. Conducting monthly inspections of all solid waste management systems is beyond the resources of the department.

COMMENT NO. 74: Commenters support that facilities be built to handle the water volume resulting from a 24-hour/100-year storm.

RESPONSE: The department appreciates the comments.

COMMENT NO. 75: Commenters stated that department inspections need to include more than record review and taking photos. Commenters stated that the department should take ground water and other samples of various media.

RESPONSE: Solid waste management system inspections include onsite visits to observe onsite management and operational practices. Inspectors also provide compliance assistance and make recommendations to remedy violations or require corrective actions. Persistent violations may be referred to the department's Enforcement Division and Legal Unit for resolution. The inspector has discretion to sample environmental media if deemed necessary to ensure compliance.

COMMENT NO. 76: A commenter stated that the department needs more than two regulators for the whole state.

RESPONSE: Staff resources for the solid waste program are based upon several factors, including the budget approved by the Montana Legislature. Currently, the department's Solid Waste Program has 7 staff, including 5 inspectors.

COMMENT NO. 77: A commenter asserted that there is a lack of justification in the proposed rules for requiring more stringent run on and run off control systems for TENORM waste management systems (designed for 24-hour/100-year storm events) than for other Class II solid waste management systems (designed for 24-hour/25-year storm events). The commenter suggested that TENORM waste management systems should be subject to the same run on and run off design requirements as all other Class II solid waste management systems.

RESPONSE: The department appreciates the comment but disagrees with the suggested revisions to the rules. The final rules require that a TENORM waste management system be designed for a 24-hour/100-year storm due to concerns raised during the stakeholder outreach process regarding the frequency of high intensity storms over a short period of time and the possibility of compromising dams that were not designed to handle those type of storm events. TENORM waste is "special waste," defined in 75-10-802(8), MCA, as "a solid waste that has unique handling, transportation, or disposal requirements to ensure protection of the public health, safety, and welfare and the environment." The department is requiring more stringent requirements for TENORM waste management systems in terms of storm water control than other Class II landfills due to the special nature of this waste stream.

COMMENT NO. 78: A commenter asked if waste will be covered with one foot of other material, such as clay.

RESPONSE: The department is proposing at least six inches of clean and compacted soil or an alternative daily cover that has been approved by the department under ARM 17.50.1104 pursuant to NEW RULE VI(2)(d).

COMMENT NO. 79: Several commenters want the department to charge adequate fees to cover cleanup, management, and enforcement.

RESPONSE: The department appreciates the comment. NEW RULE IX requires TENORM waste management systems to have department-approved financial assurance mechanisms in place for closure and post-closure care, as well as corrective action as necessary. The department has an Enforcement Division that already has funding mechanisms in place to ensure rigorous and timely compliance with solid waste rules.

COMMENT NO. 80: Several commenters stated they want the department to perform its own environmental monitoring, including taking radioactivity samples and making the results available to the public. One commenter stated that the department's monitoring should be funded by landfill operators.

RESPONSE: The department appreciates the comments but disagrees that department-collected samples should be required in all circumstances. The department has the discretion to take samples of ground water, leachate, storm water, soil and air quality at a facility any time it deems is necessary to ensure compliance. Setting a quarterly schedule is not reasonably necessary to protect human health and the environment, nor is it cost or time effective for the department. TENORM waste management systems must follow chain of custody, proper sampling procedures, and use department-approved laboratories. TENORM waste management systems must also have ground water sampling plans, operation and maintenance plans, and quality control/quality assurance plans to ensure that sampling is done properly. These plans are reviewed routinely on inspections by the department. All Class II waste management systems, including TENORM waste management systems, in Montana are already required to pay license and application fees in accordance with ARM Title 17, chapter 50, subchapter 4.

COMMENT NO. 81: Commenters suggested that ground water should be monitored monthly.

RESPONSE: The department disagrees. Variation in ground water fluctuation is seasonal in nature rather than varying month to month. Migration or changes in ground water level are minimal. Ground water quality measured in parts per million are also minimal, conservative, and must be verified statistically to detect any changes. Properly timed water quality monitoring schedules and statistical analyses of the data on a semi-annual or quarterly basis have demonstrated an effective mechanism for indicating trends or changes in water quality over time. All solid waste ground water sampling requirements are based on federal regulations that have been tested and verified to be protective of human health and the environment. The department may increase the frequency of ground water monitoring, if necessary, to protect human health and the environment.

COMMENT NO. 82: A commenter expressed disagreement that an

independent third-party should be required to perform groundwater sampling under NEW RULE VII. The commenter noted that facility owners and operators are responsible for ensuring compliance with these rules and are subject to enforcement if those requirements are not appropriately met, whether they perform the required activities themselves or via third parties. The commenter recommended that, if a facility has an employee who meets the definition of a "qualified ground water scientist," it should be authorized to perform the monitoring requirements itself.

RESPONSE: The department appreciates the comment but disagrees with the suggested revisions to the rules. The current state of the practice at licensed Class II landfills in Montana is to use third-party consultants to conduct ground water monitoring. Requiring a third-party to perform water sampling ensures objectivity for ground water sampling procedures.

COMMENT NO. 83: Commenters stated that both wells and leachate should be monitored quarterly for water quality and quantity, and that storm water should be monitored after any major precipitation event. A commenter asked how the department will ensure the licensee is collecting samples that capture seasonal variation in groundwater levels and/or flow.

RESPONSE: The department appreciates the comments. Consistent with all Class II waste management systems, TENORM waste management systems must conduct semi-annual ground water monitoring and leachate monitoring. Leachate monitoring requirements can be found under Montana's solid waste rules at ARM Title 17 chapter 50, subchapter 11. Under ARM 17.50.1305, which is incorporated into these rules at NEW RULES I(4) and VII(1), TENORM waste management systems must comply with the ground water monitoring plan requirements in ARM Title 17, chapter 50, subchapter 13, which includes having a ground water sampling and analysis plan (SAP) tailored to the types of TENORM waste being managed and the site-specific conditions. Quarterly monitoring may be required if deemed necessary by the department to protect human health and the environment. The SAP must also include schedules for capturing seasonal variation in ground water levels and or flow. The SAP, and changes to the SAP, must be approved by the department.

Under NEW RULE V, an application for a TENORM waste management system license must contain a system design that complies with the requirements of the Montana Pollutant Discharge Elimination System (MPDES) general storm water permit approved by the department's Water Protection Bureau. The design of the TENORM waste management system must be consistent with the requirements of the storm water permit approved by the department. TENORM waste management systems are required to work with the department's Water Protection Bureau to obtain a storm water permit and develop a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP must include best management practices, quarterly inspections, and sampling after significant storm events. TENORM waste management systems would be required to divert storm water away from waste and prevent it from commingling with waste. See response NO. 81.

COMMENT NO. 84: Commenters support the requirement that all ground

water monitoring must be done by an independent third-party ground water scientist.

RESPONSE: The department appreciates the comments.

COMMENT NO. 85: A commenter suggested that monitoring should be done by the department, a third-party ground water scientist, and by nearby landowners.

RESPONSE: Nearby landowners may conduct monitoring on their own property, but do not have the authority to perform monitoring on property owned by the facility. See response NO. 80.

COMMENT NO. 86: A commenter suggested that monitoring should be done into perpetuity.

RESPONSE: ARM Title 17, chapter 50, subchapter 14 sets forth post-closure care requirements for Class II solid waste management systems that includes ground water sampling for a time period that ensures that there is ongoing protection of the environment and public after the waste management system closes. The provisions are incorporated into the rules being adopted at NEW RULES I(4) and VII(1).

COMMENT NO. 87: Commenters expressed concern about ground water contamination, and stated that aquifers, including the Missoula aquifer, should be kept clean and pristine. Commenters expressed concerns that aquifers would not be adequately protected by landfill liners.

RESPONSE: The department appreciates the comments and understands the concern for aquifers throughout the state, including the Missoula aquifer. Existing rules for Class II solid waste management systems incorporate requirements for modern liner design to protect ground water aquifers. See responses NO. 42 and 56.

COMMENT NO. 88: A commenter stated that if radionuclide limits are exceeded above drinking water standards, the department should be required to notify landowners within a 5-mile radius of the TENORM waste management system, notify the list of interested parties maintained during rulemaking, and place a public notice in the newspaper of operating record in the county in question.

RESPONSE: The rules require a ground water monitoring plan that complies with ARM Title 17, chapter 50, subchapter 13. This subchapter has provisions for public notification. See response NO. 69.

COMMENT NO. 89: Commenters stated that the department should cooperate with local governmental agencies on spill reporting and response. The department should consider inter-local agreements and partnerships regarding the management of TENORM waste.

RESPONSE: The department agrees. The department has modified NEW RULE X to include notification of local DES of a spill of TENORM waste as soon as practicably possible, but in no case later than 24 hours following the spill. This will allow local DES to alert local government responders that they are responding to a TENORM area. Responders such as EMTs, fire fighters, deputy sheriffs, and DES personnel would have no other way of knowing since there is no requirement that

TENORM be placarded in transportation. In addition, all solid waste management system applications must include local government sign-off for health and environmental considerations, as well as local zoning requirements.

COMMENT NO. 90: Commenters suggest requiring contacting County DES and/or Sheriff's departments for spills and communicating with appropriate county officials. Notify public and affected landowners as soon as possible.

RESPONSE: See response NO. 89.

COMMENT NO 91: Several commenters expressed concern regarding derailment of TENORM waste in Montana or spills on highways and the potential of contamination of rivers and streams.

RESPONSE: The department appreciates these comments. NEW RULE X addresses the response to and management of spills of TENORM waste, in order to protect the environment.

COMMENT NO. 92: Commenters expressed concerns regarding an existing solid waste management system licensed to accept TENORM waste.

RESPONSE: The department appreciates the comments. Citizens who believe they have observed a violation of environmental laws at existing facilities are encouraged to contact the department's Enforcement Division by filling out an online spill/complaint form available at <http://deq.mt.gov/reporting> or by calling department enforcement staff at (406) 444-0379.

COMMENT NO. 93: A commenter stated that all spills, no matter the size, need to be reported, contained, and removed.

RESPONSE: The department agrees that spills should be reported, contained, and removed, but has excluded spills smaller than one cubic yard from this requirement. The department has determined that one cubic yard (approximately half a pickup load) is a practical amount that can be recovered and disposed of properly. Smaller amounts would not be reasonably recovered and would mix with existing material onsite. This is consistent with the department's Spill Policy, available at: http://deq.mt.gov/Portals/112/DEQAdmin/ENF/Documents/SpillPolicy_02_2016.pdf.

COMMENT NO. 94: Commenters suggested that the rules require immediate notification of spills instead of 24 hours.

RESPONSE: The department does not believe immediate spill notification is warranted. Immediate notification is not always possible, particularly in the case of motor vehicle accidents. Nevertheless, the department has changed the final rules to require notification as soon as practicable, but in no case more than 24 hours following the spill.

COMMENT NO. 95: A commenter suggested notifying "as soon as practically can be done" instead of 24 hours for spills. Immediately cannot always be done in cases of vehicle wrecks. The commenter also recommended making sure local

DES know it is TENORM due to potential risk ingestion or inhalation.

RESPONSE: The department agrees that, while immediate notification is not always possible, it is imperative that state and local DES be notified of spills as soon as possible, so that they may respond promptly, safely, and appropriately. Therefore, the department has amended the notification requirement in NEW RULE X to require notification as soon as practicable, but no more than 24 hours, to ensure that the rule is enforceable.

COMMENT NO. 96: A commenter suggested transporting waste in sealed containers.

RESPONSE: If filter media is shredded and wetted down, then this waste must be transported in sealed containers as required in the department's Waste Characterization Document, May 2020. Other loads must be covered as required in existing solid waste rules.

COMMENT NO. 97: A commenter stated that trucks spew dust, are not always covered, and there is radioactive material dripping off trucks.

RESPONSE: Under ARM 17.50.523 and NEW RULE X(2), a person transporting TENORM waste must ensure it is transported in such a manner so as to prevent its discharge, dumping, spilling, or leaking from the transport vehicle. In addition, oilfield exploration and production waste must be covered while in transit. Any person observing a potential violation of these transport rules is encouraged to notify the department by filling out an online spill/complaint form available at <http://deq.mt.gov/reporting> or by calling department enforcement staff at (406) 444-0379.

COMMENT NO. 98: Several commenters expressed concern for the rules to better protect water, wildlife, and people and that the department should follow the Montana Constitution's mandate for a clean and healthful environment. Several commenters also stated that the rules favor industry and money over health.

RESPONSE: The department appreciates the comments. The proposed rules have been strengthened to include provisions to further address protection of human health and the environment. Public input on these issues has been considered and incorporated where applicable into the final rules.

COMMENT NO. 99: A commenter stated that the critical part of the department rules is the assignment in perpetuity of liability for the environmental impacts caused by failures at TENORM sites.

RESPONSE: See response NO. 86.

COMMENT NO. 100: A commenter stated that the department should force oil and gas companies to set aside money for every oil well drilled for cleanup, remediation, and reimbursement of neighboring properties.

RESPONSE: The department appreciates the comment, but it is out of the scope of this rulemaking. The rules being adopted today concern the disposal of TENORM waste under the Montana Solid Waste Management Act, Title 75, chapter

10, part 2, MCA. The department does not have regulatory authority over oil wells. That regulatory authority rests with the Montana Board of Oil and Gas Conservation.

COMMENT NO. 101: A commenter stated that if someone dumps illegally, the department should catch them and give them the maximum punishment.

RESPONSE: Penalties for violation of these rules are prescribed by the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, MCA. Penalties assessed must be determined in accordance with the penalty factors in 75-1-1001, MCA. The department relies heavily on evidence provided from those witnessing potential illegal activity. Citizens are encouraged to report illegal dumping to the department. See response NO. 92.

COMMENT NO. 102: A commenter said that there needs to be prompt and thorough corrective action if a TENORM waste management system violates any of the department's solid waste rules.

RESPONSE: The department agrees. The department provides timely compliance assistance and regulatory oversight of all waste management systems. The department addresses violations or non-compliance, and other operational issues on a case by case basis with each waste management system. The department has the authority to require a TENORM waste management system to stop accepting waste if necessary. Waste management systems that are out of compliance may be referred to enforcement if necessary.

COMMENT NO. 103: Several commenters expressed concerns regarding climate change and global warming. Commenters discussed climate disruption due to burning fossil fuels and exacerbation of climate change by industry. One commenter recommended using solar and wind energy rather than fossil fuels.

RESPONSE: The department appreciates the comments, but they are not within the scope of this rulemaking.

COMMENT NO. 104: Several commenters expressed concerns regarding radiation health risks and safety at TENORM waste management systems.

RESPONSE: The department appreciates the comments regarding radiation health risks. The proposed rules require a radiation health and safety plan. The acceptance limits, boundary limits, and gate screening limits are proposed to protect human health.

COMMENT NO. 105: A commenter raised concerns regarding the use of appropriate survey equipment, stating that survey equipment that is not optimized for the detection of medium and energetic Beta radiation as well as having a broad sensitivity to both low and high energy x- and gamma radiation can yield exposure measurements that fail to detect as much as half of the radiation that contributes a significant radiological dose to workers in a radiation environment created by mixed radionuclides.

RESPONSE: The department appreciates the comment. The proposed rules are dealing with TENORM waste that has relatively low radioactive signatures and which occurs naturally in the background. NEW RULE VI requires procedures for

proper calibration and annual certification of instrumentation, as well as requires a radiation health and safety plan.

COMMENT NO. 106: A commenter expressed concern that there has been undue influence to "make cheap and easy" disposal of wastes that has been brought to bear on the department staff by the oil and gas industry.

RESPONSE: The department disagrees with the comment. The department's mission is to protect human health and the environment, and, to that end, the department has engaged various resources and stakeholders throughout the rulemaking process to ensure the rules meet the mission of the department. TENORM is an emerging special waste in Montana and includes but is not limited to oil and gas exploration and production waste. These rules apply to all waste streams producing TENORM wastes, including, for example, wastewater treatment filters.

COMMENT NO. 107: A commenter expressed concerns about trucks washing off near her son's school.

RESPONSE: The department understands the concern about trucks washing off near her son's school. Department staff visited the proposed truck wash after the Glendive public hearing and made some calls to address this comment. Ultimately, it does not appear to be a regulatory matter under the department's authority, but representatives of the truck wash and the school were encouraged to better communicate and work out any concerns.

COMMENT NO. 108: A commenter suggested that the department pay attention to TENORM at Colstrip.

RESPONSE: The department appreciates the comment, but site-specific concerns are not within the scope of this rulemaking.

COMMENT NO. 109: A commenter would like to see in the rules, a requirement that, if the waste begins to migrate to the neighboring properties, the owners, or the state, be required to purchase those properties.

RESPONSE: The department appreciates the comments, but the department does not have authority under the Montana Solid Waste Management Act to purchase private property or to require the owner or operator of a facility to purchase a neighboring property.

COMMENT NO. 110: Commenters expressed concerns about pipeline breaks.

RESPONSE: The department understands concerns about pipeline breaks, but the comments are not within the scope of this rulemaking.

COMMENT NO. 111: A commenter discussed concerns about Ballentine and nitrate contamination of drinking water.

RESPONSE: The department appreciates the comments. Public drinking water concerns are handled by the department's Public Water Supply Bureau and these comments are not within the scope of this rulemaking. See response NO. 56.

COMMENT NO. 112: A commenter discussed concerns about the 2011 Exxon Mobile Silvertip pipeline spill and East Helena groundwater contamination.

RESPONSE: The department appreciates the comments, but they are not within the scope of this rulemaking.

COMMENT NO. 113: Several commenters discussed concerns about Colstrip wastewater ponds.

RESPONSE: The department appreciates the comments, but they are not within the scope of this rulemaking.

COMMENT NO. 114: Several commenters expressed concern regarding illegal dumping of TENORM in Oregon.

RESPONSE: The department is aware of the recent news reports of a facility in Oregon accepting TENORM waste in violation of the TENORM waste acceptance limits under Oregon law. The rules being adopted include requirements for gate screening and waste characterization to ensure that TENORM waste management systems are only accepting waste within the limits set by these rules. The department remains concerned with the potential for illegal dumping of TENORM waste that exceeds the acceptance limits being adopted into rule. 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.

COMMENT NO. 115: A commenter provided comments on the department's separate document titled, "Requirements for the Characterization of TENORM Wastes" for waste characterization. The commenter supported the department's commitment in the reason section of NEW RULE I, at the top of page 1243, that if amendments to the waste characterization document are needed, then the department will propose to amend the document through future rulemaking, which will allow for appropriate notice and comment.

RESPONSE: The department appreciates the comments.

COMMENT NO. 116: A commenter provided comments on the department's separate document titled "Requirements for the Characterization of TENORM Wastes" for waste characterization. The commenter recommended the gate screening in (4) should be increased to 200 µR/hr. However, rather than addressing the numerical screening level specifically in this document, which is intended to address the waste characterization methods, the commenter recommended that it simply be replaced with a reference to NEW RULE III(2) to ensure consistency.

RESPONSE: The department disagrees with increasing the gate screening to 200 µR/hr. See response NO. 24. The department does agree that removing the numerical screening level in the document and replacing it with a reference to NEW RULE III(2) is appropriate and would provide consistency.

COMMENT NO. 117: A commenter provided comments on the department's

separate document titled "Requirements for the Characterization of TENORM Wastes" for waste characterization. The commenter said (5) should be changed for clarity and to avoid confusion to read "(5) A TENORM waste generator, aggregator, or TENORM waste management system may apply in writing and obtain the department's written approval that other proposed waste characterization methods are at least as protective of human health and the environment as the methods permitted under these requirements."

RESPONSE: The department agrees and has made this change.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ Angela Colamaria

Angela Colamaria
Rule Reviewer

BY: /s/ Shaun McGrath

SHAUN McGRATH
Director

Certified to the Secretary of State, June 16, 2020.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT,
17.74.350, 17.74.352, 17.74.355,)	REPEAL, AND ADOPTION
17.74.359, and 17.74.364; the repeal of)	
17.74.401, 17.74.402, 17.74.403, and)	(ASBESTOS)
17.74.404; and the adoption of New)	
Rules I through IV pertaining to)	
incorporation by reference, definitions,)	
asbestos project permits, training)	
provider requirements, fees, and refunds)	

TO: All Concerned Persons

1. On February 28, 2020, the Department of Environmental Quality published MAR Notice No. 17-410, pertaining to the public hearing on the proposed amendment of the above-stated rules at page 354 of the 2020 Montana Administrative Register, Issue No. 4. On March 27, 2020, the department published a supplemental notice at page 525 of the 2020 Montana Administrative Register, Issue Number 6, where the public hearing was rescheduled to April 29, 2020, and the comment period was extended to May 1, 2020. On April 17, 2020, the department published an amended supplemental notice at page 633 of the 2020 Montana Administrative Register, Issue Number 7, where the in-person public hearing was changed to a teleconference.

2. The department has amended ARM 17.74.350, 17.74.355, 17.74.359, and 17.74.364; repealed ARM 17.74.401, 17.74.402, 17.74.403, and 17.74.404; and adopted New Rule I (ARM 17.74.406), New Rule II (ARM 17.74.407), New Rule III (ARM 17.74.408), and New Rule IV (ARM 17.74.409) as proposed.

3. The department has amended ARM 17.74.352 as proposed but with the following changes from the original proposal, stricken matter interlined and new matter underlined:

17.74.352 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) though (13) remain as proposed.

(14) "Asbestos unit measurement (AUM)" means each unit of asbestos-containing material that may be disturbed or removed either in square, linear, or cubic feet or any combination thereof. The unit of measure (square, linear, or cubic feet) will be selected, for AUM calculation purposes, based on the configuration of the material, pre-abatement, as described in the asbestos inspection report, or executed contract document.

(15) through (38) remain as proposed.

4. The department considered all substantive comments received. A

summary of the comments received, and the department's responses are as follows:

COMMENT NO. 1: Considering recent events unfolding rapidly, the commenter requested the process for the proposed rule changes be postponed for at least 30 days or until the national and state states of emergency are withdrawn.

RESPONSE: The department agrees with the comment. The department rescheduled the original hearing date of March 24, 2020, to April 29, 2020, and extended the public comment period until May 1, 2020. In addition, the hearing was held by teleconference rather than in-person in response to the public health emergency created by COVID-19.

COMMENT NO. 2: There are descriptions in the asbestos fee rules for square feet, linear feet, and cubic feet. How do you decide which unit of measure to use when calculating the AUM total? This should be somehow tied to the bid document scope or inspection report description.

RESPONSE: The department agrees with the comment. The department has modified the proposed amendment to the definition of AUM set forth in ARM 17.74.352(14). The modification clarifies that AUMs are calculated based on the arrangement of the material before its disturbance or removal, as described in the inspection report or executed contract document.

COMMENT NO. 3: Why are the fee increases justified? Saying that it's been years since the department raised fees is not sufficient justification.

RESPONSE: As explained in MAR Notice No. 17-410 and in the department's Small Business Impact Analysis, it is necessary for the department to increase revenue to support administration of the Asbestos Control Act and the Federal Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP). The department is sensitive to the impact the proposed fee increases will have on the regulated community. The proposed fee structure will simplify assessment of permit fees, be more equitable and predictable, and be commensurate with costs incurred by the department as required by 75-2-503(1)(k), MCA.

DEQ hosted asbestos fee rulemaking stakeholder meetings prior to initiating this rulemaking. Based on feedback from stakeholders, the department adjusted the proposed AUM fee structure in Table 2 to decrease the cost per AUM for asbestos projects that remove or disturb larger quantities of asbestos containing materials to avoid charging large projects significantly more than smaller projects. See Comment No. 4. The department also proposed to set a cap for project fees at \$16,000 to avoid overcharging for large asbestos projects.

Federal grant money has decreased over the years. For the department to be a self-sufficient program, it is necessary to increase fees. The proposed fee increases will support the department's goals of increasing compliance assistance, enhancing educational and training programs, and filling a current fulltime position in the program that has been vacant for over two years. In addition, the proposed amendment adopts new fee categories supporting administrative services the department has provided to the regulated community without remuneration, such as

processing demolition notices, revising project permits, processing emergency permits, and reviewing requests for alternative work practices.

COMMENT NO. 4: The proposed AUM fee schedule will work in most instances. However, there are a few areas where the new AUM fee schedule will unreasonably raise permit fees. The commenter provides two examples:

Example 1: A floor tile project of 27,500 sq. ft. of mastic. The permit under the current permit fee system is \$890.22; under the new system, that permit fee would be \$6,000. That is a fee increase of over 670 percent and would result in a permit fee over 25 percent of the contract value.

Example 2: A ceiling tile project of 13,900 sq. ft. of tile. The permit fee under the current rule is \$712.92; under the new proposed rule the permit fee would be \$4,000. That is an increase of over 560 percent.

RESPONSE: Under the existing permit fee rules, asbestos project permit fees are calculated based on either itemized contract charges directly associated with conducting the asbestos project or on the contract volume, which is defined as the total of all charges associated with the contract. The department acknowledges that larger asbestos projects involving the disturbance or removal of a substantial amount of asbestos-containing material, will be subject to increased fees under the proposed new fee rules. However, the department believes the proposed fee structure will simplify the assessment of permit fees, will result in more equitable and predictable assessment of fees, and will be commensurate with costs incurred by the department as required by 75-2-503(1)(k), MCA. See response No. 3.

The proposed fee amendments mitigate increased asbestos project fees by treating layered homogenous materials as one layer of asbestos-containing material for fee assessment purposes and capping the total fee at \$16,000 per asbestos project permit.

In addition, permit costs cannot be directly compared between the current fee structure and the proposed fee structure because the current fee structure relies on project contract costs negotiated between the asbestos professional and project owners or operators rather than the actual amount of asbestos-containing materials removed or disturbed. The department believes the proposed fee structure will result in more foreseeable fees associated with asbestos projects and a system of fees that are easier for the department to implement.

The proposed AUM fees, from Table 2 in MAR Notice No. 17-410, decrease in cost per AUM as the project AUM quantity increases. For example, the AUM fee for the removal of 101 AUMs is \$150.00, or \$1.49 per AUM. Removal of 300 AUMs is \$150.00, or \$ 0.50 per AUM. See the table below:

AUM Fees from Table 2 in MAR Notice 17-410, broken down by cost per AUM:

AUM Quantity	Table 2 Cost for AUM Quantity	Lowest Cost per AUM	Highest Cost per AUM
up to 100	\$100	\$1.00	\$100

101-300	\$150	\$0.50	\$1.49
301-500	\$200	\$0.40	\$0.66
501-750	\$300	\$0.40	\$0.60
751-1,500	\$600	\$0.40	\$0.80
1,501-3,000	\$1,000	\$0.33	\$0.67
3,001-5,000	\$2,000	\$0.40	\$0.67
5,001-10,000	\$3,000	\$0.30	\$0.60
10,001-25,000	\$4,000	\$0.16	\$0.40
25,001-50,000	\$6,000	\$0.12	\$0.24
50,001-100,000	\$8,000	\$0.08	\$0.16
100,000+	\$16,000	Less than \$0.16	\$0.16

COMMENT NO. 5: Regarding AUMs, while in line with most of the units, is still rather lopsided when it comes to our mastics. The commenter appreciates being allowed to consolidate tile and mastics together under the proposed rule amendments, but believes it still represents a large increase. The commenter gave an example of a project they just completed. For this project, they paid a permit fee of approximately \$1,000. Under the proposed fee scale, the permit fee would be almost \$5,000 – a 500 percent increase -- when it comes to floor tile and mastics.

RESPONSE: The current fee structure was adopted in 2008. Since that time, regulated permitted projects are increasing yet department revenue for the asbestos program is decreasing. The department believes the proposed fee structure will result in more equitable and predictable assessment of fees, and will be commensurate with costs incurred by the department as required by 75-2-503(1)(k), MCA. See responses No. 3 and 4.

COMMENT NO. 6: Removing state reciprocity during future technical rule changes has been discussed. Will adopting a fee for accreditation based on out-of-state reciprocity interfere with removing out-of-state reciprocity later?

RESPONSE: The inclusion of a fee for accreditation based on out-of-state reciprocity does not preclude the department from considering out-of-state reciprocity in future rulemaking, such as in the future technical rule changes. The proposed new fee rules eliminate the discount for multiple accreditations when the accreditations are based on out-of-state reciprocity. This is intended to reflect increased costs to the department to evaluate compliance with the Montana Asbestos Control Act and administrative rules adopted under that Act by persons that have been accredited in other states with different, and potentially less stringent, requirements until out-of-state reciprocity is addressed in future rules.

COMMENT NO. 7: Concerning reciprocity, the department is discriminating against in-state contractors by not eliminating reciprocity and allowing out-of-state contractors to train in Montana with no fees. The commenter asks how does the proposed rule change address this.

RESPONSE: The department plans to give out-of-state reciprocity due

consideration in future rulemaking. See response No. 6.

COMMENT NO. 8: How will the department enforce the proposed changes?

RESPONSE: The department's asbestos control program (ACP) performs routine desk audits of permitted projects to ensure compliance. Additionally, the department relies on its Enforcement Division to ensure compliance with the Montana Asbestos Control Act, asbestos rules, and permit requirements.

The ACP inspects asbestos projects and will investigate suspected noncompliance by asbestos permit holders related to performance of asbestos projects, storage of asbestos-containing material, or maintenance of records related to asbestos projects pursuant to 75-2-518, MCA. When the department believes a violation of the Montana Asbestos Control Act, rules adopted under that Act, or the terms and conditions of a permit issued under that Act have occurred, it may initiate informal enforcement activities, including warning and violation letters or formal enforcement actions. Formal enforcement activities include administrative orders and judicial orders, and may require corrective action including assessment of administrative or civil penalties.

COMMENT NO. 9: Will the proposed rules be uniformly enforced against compliant and non-compliant; or will the department continue to discriminate only against the compliant community?

RESPONSE: The department will uniformly enforce requirements applicable to any asbestos project regulated under the Montana Asbestos Control Act and administrative rules adopted under that Act. Both compliant persons, who are operating an asbestos project under a department-issued asbestos project permit, and non-compliant persons, who are operating an asbestos project without a required department-issued asbestos project permit, must comply with the Montana Asbestos Control Act and administrative rules adopted under that Act including asbestos project permit requirements.

The department will continue to provide education, outreach, and compliance assistance to ensure non-compliant persons come into compliance. In addition, the department has a Small Business Environmental Assistance Program (SBEAP). SBEAP is a separate non-regulatory program within DEQ that assists Montana businesses in understanding and complying with environmental regulations. SBEAP offers permitting assistance and provides workshops and trainings. See response No. 8.

COMMENT NO. 10: Has the department considered tying compliance to enforcement? For example, if the department "claims" a 25 percent compliance rate, 25 percent of the Asbestos Control Program (ACP) Compliance Funding and 25 percent of the Enforcement Division funding shall be used on projects that are compliant but may be deficient. The remaining 75 percent of ACP and Enforcement resources must be applied to projects that are non-compliant and have concerns of deficiency. The commenter stated that this will ensure an increase in revenue by adding non-compliant members to the fee structure.

RESPONSE: The department is committed to increasing compliance with the Montana Asbestos Control Act and administrative rules adopted under that Act. The

department strives to bring non-compliant persons within the fee structure to increase revenue, but there remains a need to raise fees to fund the Asbestos Control Program. The department is working to increase awareness of asbestos-related issues both internally, across department programs, and externally, with the regulated community and other state and local government agencies. For example, because of an Asbestos Advisory Group recommendation, the department is working with the Montana Department of Labor and Industry (DLI) - Building Codes Program. The two agencies will provide asbestos information to contractors registering with DLI for large state contract building permits. The department will be notified about these projects and provide compliance assistance before construction work begins. The department continues to improve compliance assistance communication with contractors through its relationship with DLI and other governmental agencies.

However, funding the asbestos control program through increased enforcement is more complicated because administrative and civil penalties collected for violations of the Montana Asbestos Control Act are deposited to the state general fund and not to a special fund where they are available to fund the asbestos control program. This may only be changed through statutory amendment.

COMMENT NO. 11: When the ACP does its fiscal estimates for their budget and decides what priorities need to be addressed by the ACP, increasing compliance within the state of Montana is never budgetarily addressed. If more compliance was achieved, more permit fees would be paid, and that would increase revenue for the department without as large an increase in fees.

RESPONSE: ACP's budget and priorities are structured based on mandates set forth in the Montana Asbestos Control Act and administrative rules adopted under that Act. Increasing compliance would increase revenue, but would not fully fund the program. The department has determined it is necessary to amend the fee rules to establish sufficient funding to support accreditation of persons working in an asbestos occupation, to support training course approval, and to enable the department to effectively operate and implement its other federal and state regulatory obligations. This fee proposal is intended to simplify the existing fee structure, to apply the fees equitably across the regulated community, to provide predictability, to be commensurate with costs as required in 75-2-503(1)(k), MCA, and to generate sufficient revenue to meet department mandates. See response No. 10.

COMMENT NO. 12: Fee increases should be allocated to achieve a rise in compliance. The ACP budget should allocate funding toward the asbestos compliant industry and non-compliant asbestos industry associating the ACP compliance rate with funding of ACP efforts.

RESPONSE: See response Nos. 10 and 11.

COMMENT NO. 13: When the math is done for calculating what the department needs to fund the ACP, there is no provision for increasing compliance and what increasing compliance would do for permit fees. If the department increases compliance, there would be more permit fees and thereby more revenue

for the department's ACP. The department always put the burden on the regulated community that is already trying to do things right instead of trying to bring more regulation and compliance into our asbestos regulation community.

REASON: See response Nos. 10 and 11.

COMMENT NO. 14: Does an already approved trainer have to pay the approval fee or only the renewal fee?

RESPONSE: Upon timely renewal application, an accredited trainer would just pay the renewal fee per course every two years.

COMMENT NO. 15: If a person has approval to conduct both a Contractor Supervisor Initial (CSI) class and a Contractor Supervisor Refresher (CSR) course, are two renewals for a total of \$600 due every two years?

RESPONSE: Upon timely application for renewal of the two courses, two renewal fees are due every two years to maintain approval to continue to conduct both courses, but the total renewal fees due every two years would equal \$500 based on \$300 for CSI renewal plus \$200 for CSR renewal.

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, June 16, 2020.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 24.171.408 outfitter records,)	
24.171.412 safety and first aid)	
provisions, 24.171.520 operations)	
plans and amendments, and)	
24.171.2301 unprofessional conduct)	
and misconduct)	

TO: All Concerned Persons

1. On January 17, 2020, the Board of Outfitters (board) published MAR Notice No. 24-171-40 regarding the public hearing on the proposed amendment of the above-stated rules, at page 28 of the 2020 Montana Administrative Register, Issue No. 1. On February 14, 2020, the board published an amended notice of public hearing at page 262 of the 2020 Montana Administrative Register, Issue No. 3.

2. On March 11, 2020, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments were received by the March 13, 2020 deadline.

3. The board has amended ARM 24.171.408, 24.171.412, 24.171.520, and 24.171.2301 exactly as proposed.

BOARD OF OUTFITTERS
JOHN WAY, CHAIRPERSON

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

/s/ BRENDA NORDLUND
Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 16, 2020.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.85.104, 37.85.105, and)
37.85.106 pertaining to updating)
Medicaid and non-Medicaid provider)
rates, fee schedules, and effective)
dates)

TO: All Concerned Persons

1. On May 15, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-916 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 846 of the 2020 Montana Administrative Register, Issue Number 9.

2. The department has amended the above-stated rules as proposed.

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

COMMENT #1: The department received a comment asking for reimbursement rates to be reconsidered for air ambulance codes. The commenter stated that most insurance companies use the Medicare fee schedule as a baseline for reimbursement and that Montana Medicaid currently reimburses air ambulance providers at less than 40% of Medicare. The commenter stated that at the current rates offered, the transportation of Medicaid patients in Montana happens at a considerable loss to the providers willing to provide this transportation. The commenter expressed concern about the large discrepancy in what is provided for air ambulance services compared to other providers.

RESPONSE #1: Thank you for your comment. The department is currently researching the reimbursement rates for air ambulance service for Montana Medicaid.

COMMENT #2: A commenter requested the department open CDT code D1999, an unspecified preventative procedure. Opening the code will help dental providers to cover the costs associated with personal protective equipment (PPE) due to COVID-19. PPE includes use of N95 masks, face shields, and surgical caps and gowns. The commenter feels there is a significant and ongoing fee associated with these investments.

RESPONSE #2: Thank you for your feedback. The department will not be opening D1999 for reimbursement. Additional resources for providers can be found at

<https://banking.mt.gov/Financial-Resources-for-Montana-Residents-Impacted-by-COVID-19> and additional resources for grants can be found at <https://www.sba.gov/funding-programs/disaster-assistance>.

COMMENT #3: The department has received a request to add CDT code D0251, extra-oral posterior radiographic image. The commenter stated the reason this code is needed is because many patients are unable to tolerate intra-oral radiographic sensors required to make diagnostic images of dental structures. Age, patients with variable dental anatomy, and patients with severe infections are given as reasons patients are unable to tolerate the sensors. The commenter also stated having a less invasive procedure also would allow for less exposure to COVID-19.

RESPONSE #3: The department agrees with this comment and will add D0251, extra-oral posterior radiographic image.

COMMENT #4: A commenter expressed support for the proposed conversion factors and provider rate of reimbursement for optometric providers but stated the department continues to not follow 37-10-104, MCA. The commenter asserted that optometrists are not reimbursed for services in the same manner as other ocular practitioners rendering similar services, which the commenter asserted results in illegal discrimination in reimbursement for ocular practitioners. The commenter noted that the department includes a variety of non-physicians in the physician services category. The commenter stated the department is violating 37-10-104, MCA, because optometrists are not reimbursed the same amount as medical doctors or doctors of osteopathy for the same service.

RESPONSE #4: As the commenter is aware, this precise issue is being litigated in the Montana Eighth Judicial District Court, Cascade County, in the matter of Drs. Vincent, Benner and Hoch v. State of Montana, Montana Department of Public Health and Human Services, Cause No. CDV-19-0314, which was filed by plaintiffs in May 2019. The department has responded to this lawsuit, and the district court will decide the issue.

COMMENT #5: A commenter expressed disappointment that the targeted case management (TCM) rate for adults with severe and disabling mental illness (SDMI) or with substance use disorder (SUD) is not commensurate with the reimbursement rate for children's TCM service. The commenter stated that the proposed rate is a financial disincentive for providers to offer TCM for adults with SDMI or SUD.

RESPONSE #5: The TCM service for children with serious emotional disturbance was recently modified through a collaborative process with providers. A revised rate was established for TCM for children because the service now has additional requirements that providers must meet under the modified service. These additional requirements are not part of the adult SDMI and SUD targeted case management service.

COMMENT #6: A commenter stated that the reimbursement for the proposed Behavioral Health Group Homes (BHGH) is too low to adequately staff the home based on the staffing requirements. The commenter stated that the required staff appears to be equivalent to the HCBS Residential Habilitation home while the daily rate is significantly lower.

RESPONSE #6: BHGH staffing differs significantly from the HCBS Residential Habilitation mental health group home. BHGH only requires one awake staff 24 hours per day while the HCBS group home requires a 1:4 staffing ratio for 16 hours per day (during the day) and one awake staff for eight hours per day (overnight). Additionally, the reimbursement rate for BHGH was determined using the methodology agreed upon between the department and stakeholders. The department received feedback from stakeholders regarding the salaries required to hire and retain staff. Included in the calculation are the salaries provided from this feedback, benefits, overhead, and a productivity factor. This is consistent with the recommended rate methodology employed by the Centers for Medicare and Medicaid Services.

COMMENT #7: A commenter requested the department consider annual cost of living increases for reimbursement rates.

RESPONSE #7: The department thanks you for your comment. This rule is an implementation of a cost of living increase authorized by the Montana State Legislature.

COMMENT #8: A commenter requested the department make the reimbursement rate for PACT Community Maintenance Program (CMP) consistent with service requirements, as the reimbursement rate is weekly in the fee schedule while the service requirements are monthly.

RESPONSE #8: The department reviewed the weekly CMP rate and the service requirements. The service requirement for CMP is two PACT staffing meetings per month for each member, documented through a progress note and contacts with the member as medically necessary. The department understands the commenter's concerns and therefore will adjust the unit for this service to read "day" and will define day for this service as a member contact or member staffing at a PACT team meeting. This will continue to allow the provider the flexibility to individualize the member's services while billing for each of the four reimbursable activities at the time of the provision of the service.

4. These rule amendments are effective July 1, 2020.

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

/s/ Marie Matthews for Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 16, 2020.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.27.902 and 37.88.101)
pertaining to Medicaid and non-)
Medicaid manual updates)

TO: All Concerned Persons

1. On May 15, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-917 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 856 of the 2020 Montana Administrative Register, Issue Number 9.

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

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

In order to provide an organized review of the comments, the department has noted that comments seem to fall into four broad categories. First, the department received many positive comments about the collaborative process that led to this rulemaking. Second, there were policy-related suggestions that look toward the future of services and how the department might improve outcomes for Montana Medicaid members with severe and disabling mental illness (SDMI). Third, we received multiple comments from one provider and individuals affiliated with this provider pertaining to the proposed Behavioral Health Group Homes (BHGH). Last, the department received many comments that showed that reviewers/commenters read the proposed rule very carefully and provided detail-oriented edits and clarifications. Our responses are organized in this order.

The department thanks commenters for their careful review, insights, and the collaboration on this rulemaking that sets a foundation through which we can continue to improve the mental health system for adults with SDMI.

COMMENT #1: Multiple commenters spoke out in favor of the proposed amendments and thanked the department for collaboration with providers in preparing the proposed changes.

RESPONSE #1: The department thanks the commenters and the Behavioral Health Alliance of Montana for the collaboration involved with these proposed rule amendments. The department looks forward to further collaboration with the Behavioral Health Alliance of Montana and other stakeholders, including Montana

Medicaid members, as we work towards implementing these changes and evaluating this program outcomes.

COMMENT #2: A commenter requested additional information about where to find fidelity standards for Assertive Community Treatment (ACT).

RESPONSE #2: The model the department will use is the Substance Abuse and Mental Health Services Administration (SAMHSA) ACT fidelity model. This is the national evidence-based standard that was initially published in 2008. (<https://store.samhsa.gov/product/Assertive-Community-Treatment-ACT-Evidence-Based-Practices-EBP-KIT/SMA08-4344>.)

COMMENT #3: A commenter requested the department strengthen the requirements for "linkage" with primary care to require true care coordination and management of chronic illnesses in partnership with primary care providers.

RESPONSE #3: This is a visionary statement. The department hopes this is the direction that healthcare is moving. The separation of behavioral healthcare from primary care can be stigmatizing. However, this rulemaking recognizes that mental health centers providing Program of Assertive Community Treatment (PACT) are true specialty care providers for members whose needs exceed traditional outpatient behavioral health treatment. The department has proposed quality measures for the proposed PACT tiered system and intends to monitor those measures to ensure coordination of care with primary care providers. The expectation is that providers will coordinate physical health care as part of PACT.

COMMENT #4: A commenter requested the department to consider choosing one outcome that moves beyond a "checkbox" (i.e., it was done or not) to incentivize change. The commenter suggested that this could be done with the community participation scale or with days in independent housing; something that either directly or indirectly measures progress toward recovery.

RESPONSE #4: The quality measures for PACT were chosen to ensure that the department was monitoring all the changes in the program. The department understands the intent and goal of the comment, however, and will review the quality measures for the proposed PACT tiered system and add a measurement that measures progress towards recovery.

COMMENT #5: A commenter asked the department to consider building a clinical model that does more than "maintain" people in the community but truly guides and supports them toward recovery when considering technical assistance support.

RESPONSE #5: The department understands that this comment expresses a desire to ensure that clinical improvement is part of any technical assistance processes provided for PACT. The department agrees that the standards of quality care for PACT services supports the clinical model and will endeavor to consider this as part of any technical assistance that may be provided in the future.

COMMENT #6: A commenter requested the department consider changing the frequency of the level of impairment for PACT from every 90 days to annually because they believe that level of functioning with members who have SDMI does not change significantly within a 90-day period of time.

RESPONSE #6: Inherent in the collaborative process involved with this rulemaking was a shared desire to improve the outcome and quality measures with the proposed new service system. The level of impairment form is an integral first step towards meeting that goal. The department aligned the level of impairment form with the timeframe required for treatment planning to allow for providers to complete both simultaneously. Furthermore, the department would expect that if a member is receiving an intensive rehabilitative program such as assertive community treatment that there would be improvements to a member's level of functioning, and if there are not, the provider should reassess the appropriateness of the service for the member before a year has passed. The department will review the frequency of change and the usefulness of the assessment after at least a year of implementation and will determine collaboratively with providers if changes should be made.

COMMENT #7: Many commenters who had either worked for or received services from one specific mental health provider expressed concerns pertaining to the proposed BHGH. There were four primary concerns expressed as summarized below:

Commenters expressed concern over the proposed staffing requirements for BHGH and the drastic revisions of operations it would cause for the current adult mental health group homes' daily operating procedures. In particular, commenters expressed concern that having clinical staff employed by the mental health center and working at the group home would impede the member's choice of service providers.

Commenters expressed concern regarding the continued stay requirements, stating that referring the member to the Home and Community Based Services (HCBS), Severe and Disabling Mental Illness (SDMI) waiver and having 60-day continued stay review requests will cause unnecessary stress to the members.

Commenters stated that due to the lack of housing opportunities, they are concerned that implementing the proposed rule will leave members homeless and require members who, while not meeting the medical necessity of a group home setting, are not ready for independent living but nonetheless will be required to live independently. They also stated that they encourage the department to continue long term group homes for members who need that level of care.

One commenter stated that allowing Community Based Psychiatric Rehabilitation (CBPRS) concurrent with group home services is an integral part of a member's recovery in a group home and that not having the ability to utilize this service will set members back and is not conducive to their recovery.

Commenters stated that the reimbursement for the proposed BHGH is too low to adequately staff the home based upon the staffing requirements.

One commenter expressed a concern that the proposed BHGH does not allow members to slowly decrease staff supervision as they work towards independent living skills.

RESPONSE #7: BHGHs are authorized by the Centers for Medicare and Medicaid Services (CMS) in the Other Rehabilitative Services state plan benefit under Social Security Act 1905(a)(13) and 42 CFR 440.130(d). Rehabilitative services are specialty, short-term healthcare services that help a member regain physical, mental, and/or cognitive (thinking and learning) abilities that have been lost or impaired as a result of disease, injury, or treatment. Rehabilitation services help members return to daily life and live up to their best functioning potential. Rehabilitative services are not intended to be long-term services.

Staffing requirement: Staffing requirements were added to BHGH to ensure a multidisciplinary team is available to members that require group home level of care. This team includes clinical staff, care management, and a certified behavioral health peer support specialist. The department regrets any negative impact this could potentially have on a provider's business model; however, it was necessary to ensure the provision of this service was therapeutic in nature to meet CMS requirements. In addition, the department collaborated with providers to minimize and mitigate negative provider impact while ensuring that Montana Medicaid members receive high quality therapeutic services.

Choice of provider: The department does not agree that the proposed rules remove member's choice in clinical providers. Members may choose which residential setting they receive services in, or alternatively, may select other services from Montana Medicaid's array of services. It is inherent in a therapeutic residential setting that clinical staff are employed and provide services to the members residing in the home.

Housing concerns: The department agrees with the commenters that some communities in Montana have a low stock of low-income housing. In order to improve housing-related concerns, Montana Medicaid has included tenancy support services in both the proposed PACT and BHGH. However, one thing Medicaid cannot do is pay for housing. It is federally disallowed to use a clinical service as a substitute for housing. It is expected that the care management component in a BHGH is providing tenancy services to secure permanent housing when that member is ready to step down.

Concurrent services: The department agrees with the commenter that services provided through CBPRS are an integral part of a member's recovery. The department allows concurrent billing of CBPRS if the service is provided outside the group home setting, in the community, by staff who are not employed in the group

home when it is medically necessary. In addition, it is expected that services provided in CBPRS are provided by group home staff when the member is present in the group home as an integral component of a therapeutic group home setting.

Reimbursement: The services in a BHGH instruct, assist, and support a member in areas such as medication education and monitoring, basic social and living skills in mental illness symptom management, household management and community living transitions to encourage self-sufficiency. These services must be included in the bundled rate for BHGH as payment for room and board are not authorized through Medicaid (42 CFR 441.360). The reimbursement rate for BHGH was determined using the methodology agreed upon between the department and stakeholders. The department received feedback from stakeholders regarding the salaries that are required to hire and retain staff. Included in the calculation are the salaries provided from this feedback, benefits, overhead, and a productivity factor. This is consistent with the recommended rate methodology employed by CMS.

Length of stay and continued stay requirements: The proposed BHGH encompasses mental health services that are rehabilitative and enable the member to develop and enhance psychiatric stability, social competencies, personal and emotional adjustment, and independent living and community skills when these abilities are impaired by the symptoms of mental illness. The department expects that members would require and receive less supervision as their treatment progresses and they have gained necessary skills towards independent living. In addition, the department did not designate the amount of each service component each member receives and expects members receive individualized treatment.

Due to the short-term nature inherent with rehabilitative services the department believes a 60-day continued stay review is appropriate to ensure members continue to meet the medical necessity requirements for this service and are making progress towards self-sufficiency. Providers are required to refer members to be screened for the HCBS SDMI waiver program if they require more than a 120-days' stay to determine if the member would be better served with long term services and supports. If the member does not meet the requirements for the waiver, the member may continue to receive services at the BHGH if they continue to meet the medical necessity requirements of this service. The department disagrees with comments that we have removed long-term group homes; we have simply put them under the appropriate federal authority, the 1915(c) HCBS SDMI waiver.

The department also disagrees that we have introduced a rule that will make members homeless; to the contrary we have built in tenancy services and instituted a requirement for waiver referral in the event that a member requires long term services and supports.

COMMENT #8: Commenters requested the department reconsider the progress note requirement on BHGH due to the time it would take away from client care and burden it places on staff. In addition, a commenter requested clarification on the turnaround time for progress notes for when they must be in the member's chart.

RESPONSE #8: The progress notes are required in ARM 37.85.414, ARM 37.106.1909, and the General Medicaid Manual and are not new requirements. Policy 130 was added to assist providers in complying with these requirements. Pursuant to ARM 37.85.414(1)(a), "All records which support a claim for a service or item must be complete within 90 days after the date on which the claim was submitted to Medicaid for reimbursement. A record that is required to be signed and dated, including but not limited to an order, prescription, certificate of medical necessity, referral or progress note, is not complete until it has been signed and dated." The services that are in the Addictive and Mental Disorder Division, Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health are all clinical in nature and, beyond the rule, it is a best practice in healthcare to document clinical care precisely and accurately.

COMMENT #9: A commenter requested that, in Policy 115 [Assessments] (5), the word "narrative" be optional or replaced with "content must be present" with regard to assessment requirements.

RESPONSE #9: This comment is outside of this rulemaking process; however, ARM 37.106.1915(1) requires information to be presented in a narrative form.

COMMENT #10: A commenter requested Policy 115 [Assessments] be revised to remove (5)(n) initial treatment plan goals. The commenter stated that since assessments do not always result in a recommendation for treatment that the treatment recommendations in (5)(m) should suffice.

RESPONSE #10: The department has considered the commenter's request and will revise the language in Policy 115 (5) to reflect the requested change.

COMMENT #11: A commenter requested the following change to Policy 120 (4): replace "The treatment plan must be completed upon admission to be revised" with "Initial treatment goals will be established per ARM 37.106.1915 (1)(d). The treatment plan must be complete within 21 days of admission and reviewed and updated..." The commenter suggested this change is consistent with Mental Health Center requirements in ARM 37.106.1916.

RESPONSE #11: The department has considered the commenter's request and will revise language in Policy 120 *Individualized Treatment Plans for Behavioral Health Treatment* to be consistent with Mental Health Center requirements in ARM 37.106.1916.

COMMENT #12: Commenters noted the following errors:

- An error in Policy 530, page 2 under Utilization Management #3; "(ASAM 3.5) level of care" should be "(ASAM 2.5) level of care".
- An error in Policy 525 under Utilization Management #3; "(ASAM 3.5) level of care" should be "(ASAM 2.1) level of care"

RESPONSE #12: The department recognizes these errors and will correct the referenced policies.

COMMENT #13: A commenter requested adding "mental health professional" in Provider Requirements in Policy 425, so the policy will read: "MH OP Therapy may be provided by a ~~licensed~~ licensure candidate clinical mental health professional or a *mental health professional*".

RESPONSE #13: The department has considered this request and will change Policy 425 *Mental Health (MH) Outpatient (OP) Therapy* under Provider Requirements to read "MH OP Therapy may be provided by a master's level licensed mental health professional. Licensure candidates may provide MH OP Therapy when employed by a licensed Mental Health Center."

COMMENT #14: A commenter stated that Policy 455 (8) and (10) and Policy 460 (9) and (11) need clarification as they seem to conflict. One states they must bill the bundled rate and the other states that they must bill fee for service if they have had vacant positions for 90 days.

RESPONSE #14: Assertive Community Treatment (ACT) is an evidence-based practice that improves outcomes for members with severe mental illness who are most at-risk of psychiatric crisis and hospitalization and involvement in the criminal justice system through a multidisciplinary team approach with assertive outreach in the community. PACT teams who have been understaffed for an extended period of time no longer meet the multidisciplinary team approach paramount to the fidelity of the PACT. In addition, the established fee structure for PACT services assumes a fully staffed PACT team; therefore, in order to continue to bill for this service, providers must have staffed PACT teams. The department will waive the staffing requirement in order to give providers time to rehire for team members as vacancies occur; however, if after 90 days the vacancies are not filled, the provider must convert to billing fee for the actual services rendered until the vacancies are filled.

COMMENT #15: A commenter requested the department consider removing the phrase "that are relevant to service provision" from the proposed language in Policy 120 to ensure all issues related to a person's condition are identified.

RESPONSE #15: The department has considered the commenter's request and will revise language in Policy 120 Individualized Treatment Plans for Behavioral Health Treatment and will make the requested change.

COMMENT #16: A commenter requested the department consider allowing reimbursement for three to five Certified Behavioral Health Peer Support Specialist sessions prior to determining a SDMI or Substance Use Disorder (SUD) diagnosis. This request relates to Policies 415 and 515 (Mental Health and Substance Use Disorder Peer Support Services).

RESPONSE #16: This request is outside the scope of the proposed rule change; however, the department implemented the program consistent with 37-38-102(2), MCA, as well as Medicaid billing requirements.

COMMENT #17: A commenter requested the department include a definition of "face-to-face" in the Definitions Policy and that "face-to-face" include video therapy.

RESPONSE #17: The department has considered this request and will add a definition of "face-to-face services" to Policy 002 *Definitions* to the *Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health*.

COMMENT #18: A commenter requested the department provide clarification between Policy 455 (3) *Community Maintenance Program - Stand-alone (sCMP)* and Policy 460 (4) *Program of Assertive Community Treatment (PACT)* regarding number of members served. The commenter brought attention to sCMP policy stating that services can be provided to up to 50 members while PACT services can be provided to up to 100 members for all three tiers.

RESPONSE #18: Policy 455 *Community Maintenance Program – stand-alone (sCMP)* and the Community Maintenance Program as part of the PACT tiered system are two entirely distinct programs. Based upon this statement, as well as other occasions when this has caused confusion, the department has decided to rename the stand-alone community maintenance program to Montana Assertive Community Treatment program. The purpose of this service is to provide an assertive community treatment program that reflects the rural and frontier nature of the state of Montana.

In sum, there are four bundled assertive community treatment services. In addition to the newly named Montana Assertive Community Treatment (MACT), there are three bundled services that are part of the PACT tiered system:

- InPACT - an intensive transitional PACT service within a residential setting for members who need short-term supervision, stabilization, treatment, and behavior modification in order for a member to be able to reside outside of a structured setting.
- PACT - a member-centered, recovery oriented, mental health services delivery model for facilitating community living, psychosocial rehabilitation, and recovery for members who have not benefited from traditional outpatient services.
- Community Maintenance Program (CMP) - is intended to provide medication and community support for members who require long-term, ongoing support at a higher level than traditional outpatient services in order to be maintained successfully in the community and remain out of higher levels of care.

The fourth service, proposed in Policy 455, Community Maintenance Program – Standalone (sCMP), is a standalone service that is provided in an area that does not have enough Montana Medicaid members/available staffing to merit the provision of

a full PACT team. This service's name will be changed to Montana Assertive Community Treatment (MACT) in the final rule to avoid confusion.

The first three services are all provided as part of the PACT tiered system and provided by a PACT team operating under the staffing and client ratios described in Policy 460, Program for Assertive Community Treatment.

COMMENT #19: A commenter requested the department consider the 2 FTE in Policy 460 (7)(k) be optional due to many organizations having existing infrastructures in place that make these positions essential. This requirement makes these positions redundant for those organizations.

RESPONSE #19: The PACT fidelity model requires a dedicated administrative assistant for a PACT team. The department increased the number to two based upon feedback received from the Behavioral Health Alliance of Montana's stakeholder meetings to assist with the documentation and utilization requirements of this program. These positions are built into the rate structure agreed upon; therefore, they cannot be "optional" without changing the agreed upon rate structure. The department is open to continued conversations about this topic.

COMMENT #20: A commenter requested information about how nursing service will be reimbursed when a PACT provider is required to bill fee-for-service due to vacant positions.

RESPONSE #20: The department issued a Provider Notice, *Nurse Visit – Appropriate Billing Reminder*, dated May 29, 2019, that provides guidance on the appropriate billing for nursing services, located at: <https://medicaidprovider.mt.gov/Portals/68/docs/providernotices/2019PN/provnoticenursevisitappropriatebillingreminderrev05292019.pdf>.

COMMENT #21: A commenter requested billing requirements to be clarified for PACT services.

RESPONSE #21: In order to bill for PACT services, a provider must have approval from the department for the PACT team, be a mental health center, have received appropriate training, and have the necessary staff in place. PACT is billed on a 1500 form and the member must meet medical necessity criteria.

COMMENT #22: A commenter requested changing preauthorization and review requirements from "36 hours" to "three business days" in Policy 545 *SUD Medically Monitored Intensive Outpatient (ASAM 3.7)*, utilization management section. This would match language in Section 2 *Utilization Management*.

RESPONSE #22: The department will add clarification for utilization management prior authorization for Policy 545 *SUD Medically Monitored Intensive Inpatient (ASAM 3.7)* to be consistent with Policy 206 *Requesting a Prior Authorization –Acute Services*.

COMMENT #23: A commenter recommended the following change to Policy 206/206a: *(2) Continued stay reviews are required for more than five ~~eight~~ days in the Crisis Stabilization Program, and will be required every three days thereafter, and may be submitted via Auto-Authorization (Policy 206/206a).*

RESPONSE #23: The department has considered the commenter's request and will make the requested change to Policy 206 *Requesting Auto Authorization – Acute Services* and Policy 206a *Auto Authorization Quality Assurance*.

COMMENT #24: A commenter requested that Policy 550 (1)(a) Medication Assisted Treatment (MAT) include alcohol as clinically indicated for this service. The commenter additionally requested that alcohol be added to the Policy 002 Definitions.

RESPONSE #24: This request is outside the scope of proposed rule changes. The department intends to review the MAT section of the manual in the fall and will consider this comment at that time.

COMMENT #25: Two commenters requested the department reconsider requiring providers to use the Milliman Care Guidelines (MCG) due to the unexpected cost to providers to access the material.

RESPONSE #25: The department will remove the reference to MCG and include medical necessity criteria consistent with the PACT fidelity model in the Addictive and Mental Disorders, Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health.

COMMENT #26: A commenter asked if beds in BHGH may be used to serve member who are in InPACT.

RESPONSE #26: The department has determined that members who are receiving InPACT may reside in a BHGH. Providers must bill for the service being provided and may not bill for both InPACT and BHGH concurrently. The provider must meet the licensure requirements for the service being billed. The member receiving services in InPACT must be provided services from the PACT team. PACT team members are dedicated staff; therefore, the clinical, care management, and certified behavioral peer support components in the BHGH cannot replace services of the PACT team nor can the PACT team provide services to members who are not admitted into the PACT program. This must be clearly documented.

COMMENT #27: A commenter asked if a BHGH can be used to house members receiving PACT if they are homeless.

RESPONSE #27: Montana Medicaid cannot pay for room and board. If a homeless individual meets the criteria for either inPACT or BHGH, the appropriate service may be billed. Clinical criteria are independent of housing status but housing status

should be considered as part of the holistic assessment that includes social determinants of health when determining a member's clinical needs.

COMMENT #28: A commenter asked if a member could receive Day Treatment services in the morning and Community Based Psychiatric Rehabilitative Services (CBPRS) in the afternoon.

RESPONSE #28: There were no substantive changes to these two services in this proposed rulemaking. A member can still receive Day Treatment Services in the morning and CBPRS in the afternoon. The department recommends providers follow best practices for coordination of care and documentation that speaks to the medical necessity of each service.

COMMENT #29: A commenter requested that the language in Policy 460, page two, Medical Necessity for PACT, be modified from "three days per week" to "three contacts per week."

RESPONSE #29: The department reviewed Policy 460 and determined that it already reads "three contacts per week."

COMMENT #30: A commenter asked that since members in PACT need to be staffed three times per week and members in InPACT need to be staffed five times per week, do they need to document the staff who are present at the meetings.

RESPONSE #30: The ACT model states that the team must meet daily; this includes the entire team. The team must document which members they discussed during the meetings. Documentation of staff members present at daily team meetings would reflect adherence to the PACT fidelity model.

COMMENT #31: A commenter requested information pertaining to the admission process and how to notify the state when a member is admitted, as prior authorization is not required but continued stay reviews are required for PACT and Community Maintenance Program.

RESPONSE #31: The admission process for each provider does not change with the exception that the provider will not need to submit a prior authorization request. It is the provider's responsibility to track the number of service days provided and request a continued stay review pursuant to policy/rule.

COMMENT #32: A commenter requested that the DLA-20 assessment that is required for Substance Use Disorder Intensive Outpatient Therapy Services be amended to reflect that it is required for only adult patients as there is not a DLA-20 assessment for adolescent members.

RESPONSE #32: The comment is outside of this rulemaking process. The department will issue a provider notice that will provide direction regarding this request.

4. These rule amendments are effective July 1, 2020.

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

/s/ Marie Matthews for Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 16, 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 ADOPTION,
Rules I through XV, the amendment	)	AMENDMENT, AND REPEAL
of ARM 37.90.401, 37.90.402,)	
37.90.403, 37.90.406, 37.90.408,)	
37.90.410, 37.90.412, 37.90.413,)	
37.90.415, 37.90.416, 37.90.417,)	
37.90.420, 37.90.425, 37.90.430,)	
37.90.431, 37.90.438, 37.90.447,)	
37.90.448, 37.90.449, and 37.90.450,)	
and the repeal of ARM 37.90.428,)	
37.90.429, 37.90.432, 37.90.436,)	
37.90.437, 37.90.440, 37.90.441,)	
37.90.442, 37.90.445, 37.90.446,)	
37.90.460, and 37.90.461, pertaining)	
to Home and Community Based)	
Services for Adults with Severe and)	
Disabling Mental Illness)	

TO: All Concerned Persons

1. On May 15, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-918 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 861 of the 2020 Montana Administrative Register, Issue Number 9.

2. The department has adopted the following rules as proposed: New Rule I (37.90.409), New Rule II (37.90.414), New Rule III (37.90.439), New Rule IV (37.90.451), New Rule V (37.90.452), New Rule VI (37.90.453), New Rule VII (37.90.454), New Rule VIII (37.90.455), New Rule IX (37.90.433), New Rule X (37.90.419), New Rule XII (37.90.418), New Rule XIV (37.90.435), and New Rule XV (37.90.426).

3. The department has amended the following rules as proposed: ARM 37.90.401, 37.90.403, 37.90.406, 37.90.408, 37.90.410, 37.90.412, 37.90.413, 37.90.415, 37.90.416, 37.90.417, 37.90.420, 37.90.430, 37.90.431, 37.90.438, 37.90.447, 37.90.448, 37.90.449, and 37.90.450.

4. The department has repealed the following rules as proposed: ARM 37.90.428, 37.90.429, 37.90.432, 37.90.436, 37.90.437, 37.90.440, 37.90.441, 37.90.442, 37.90.445, 37.90.446, 37.90.460, and 37.90.461.

5. The department is withdrawing New Rule XI for the reasons set forth in Comment and Response #1.

6. 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 XIII (37.90.434) HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: LIFE COACH

(1) through (5) remain as proposed.

(6) Life coach services may not duplicate services provided under behavioral intervention assistant ~~or payee services~~.

AUTH: 53-2-201, 53-6-402, MCA

IMP: 53-6-402, MCA

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

37.90.402 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: THE PROVISION OF SERVICES (1) The services available through the waiver program are:

(a) through (o) remain as proposed.

~~(p) payee, as defined in ARM 37.90.440;~~

(q) through (t) remain as proposed but are renumbered (p) through (s).

AUTH: 53-2-201, 53-6-402, MCA

IMP: 53-6-402, MCA

37.90.425 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: CASE MANAGEMENT

(1) and (2) remain as proposed.

(3) A case management team must consist of:

(a) remains as proposed.

(b) a ~~licensed~~ social worker with a bachelor's degree and two consecutive years' experience providing case management services to adults with severe and disabling mental illness.

AUTH: 53-2-201, 53-6-402, MCA

IMP: 53-6-402, MCA

8. 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: As part of the review process of the department's 1915(c) Home and Community Based, Severe and Disabling Mental Illness waiver renewal application, the Centers for Medicare and Medicaid Services (CMS) requested

additional information about the payee service, as proposed in New Rule XI. The department responded to this request and then participated in a follow-up call with CMS on June 11, 2020. At that time, CMS informed the department that the payee service is not a reimbursable service through the waiver because allowable activities on the waiver are limited to services in which the provider assists the member with financial management. CMS said the waiver cannot reimburse an entity for receiving a member's money and paying the member's financial obligations on behalf of the member.

RESPONSE #1: As a result of the information from CMS, the department has removed payee services from the waiver application. Therefore, the department must withdraw New Rule XI from this rule notice and cannot reimburse providers for payee services. The life coach service may continue to be used to assist a member in managing his or her financial obligations. The life coach service, however, may not be used to bill for payee services. Medicaid members may still access payee services through the Social Security Administration or Veterans Affairs.

A note about Life Coach: Well before the rule in its current form was proposed, the department held a stakeholder meeting about proposed waiver changes. At this meeting, the department proposed to combine homemaker, habilitation aide, personal assistant, and life coach services into one comprehensive service. This was in order to remove duplicative services and to provide an enhanced behavioral aide service. Stakeholders raised concerns about this proposal, and the rule notice does not have the proposed combined service. Instead, the rule notice has a new behavioral intervention assistant service and retains life coach service.

COMMENT #2: A commenter expressed concern about the addition of the licensure requirement in ARM 37.90.425 for social workers on waiver case management teams.

RESPONSE #2: The department reviewed the requirements in the 1915(c) Home and Community Based, Severe and Disabling Mental Illness waiver renewal application and will remove the reference to the licensed social worker. The minimum requirements as stated in the application for social workers are a bachelor's degree and at least two years' experience.

COMMENT #3: A commenter would like clarification if the program supervisor position in the Intensive Mental Health Group Homes and the Mental Health Group Homes is a clinical position.

RESPONSE #3: Licensure requirements for mental health group homes define a program supervisor as a licensed mental health professional (ARM 37.106.1902) and require that mental health group homes hire or contract with a program supervisor (ARM 37.106.1938). The proposed rule is consistent with current licensure requirements.

9. The department intends these rule adoptions, amendments, and repeals to be effective July 1, 2020.

/s/ Brenda K. Elias

Brenda K. Elias
Rule Reviewer

/s/ Marie Matthews for Sheila Hogan

Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 16, 2020.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 42.12.101, 42.12.106,	)	REPEAL
42.12.130, 42.12.133, 42.12.209,)	
42.13.101, and 42.13.107, and the)	
repeal of ARM 42.12.207 pertaining)	
to approval of a licensee without)	
premises and concession)	
agreements)	

TO: All Concerned Persons

1. On March 13, 2020, the Department of Revenue published MAR Notice No. 42-1017 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 462 of the 2020 Montana Administrative Register, Issue Number 5.

2. On March 27, 2020, the department published an Amended Notice of Public Hearing on Proposed Adoption for MAR Notice No. 42-1017 at page 566 of the 2020 Montana Administrative Register, Issue Number 6, which rescheduled the hearing, notice accommodation, and comment deadline dates in response to Governor Bullock's March 15, 2020 Executive Orders 2-2020 and 3-2020 (Orders) providing for measures to combat the spread of the COVID-19 Novel Coronavirus.

3. On April 30, 2020, the department published a Second Amended Notice of Public Hearing on Proposed Adoption for MAR Notice No. 42-1017 at page 772 of the 2020 Montana Administrative Register, Issue Number 8, which modified the hearing to a videoconference format in further compliance with Governor Bullock's Orders.

4. On May 6, 2020, a public hearing was held via videoconference to consider the proposed rulemaking. The following commenters were present and provided oral testimony: Joel Silverman, Silverman Law Office, PLLC; and Jessie Luther, Taylor Luther Group, PLLC, on behalf of the Hospitality and Development Association of Montana (HDAM). The following persons were present, but provided no oral testimony: John Iverson, on behalf of the Montana Tavern Association (MTA), and Jessica DeMarois, attorney, Goodrich & Reely, PLLC. The following persons provided formal written comments: Jessie Luther, Taylor Luther Group, PLLC, on behalf of HDAM; John Iverson, on behalf of the Montana Tavern Association (MTA); and Michael Lawlor, Lawlor & Company, PLLC.

5. The department has amended 42.12.106, 42.12.130, and 42.13.107, and repealed ARM 42.12.107 as proposed.

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

42.12.101 APPLICATION FOR LICENSE (1) through (3) remain as proposed.

(4) At any time during the application process, an applicant must notify the department of any changes in the information and documents submitted under (3) and ~~immediately~~ promptly provide the department with any corrected or updated information or documents. The department will toll the processing time of the applicant's license application in accordance with 16-4-402, MCA, until the corrected or updated documents are received.

(5) through (9) remain as proposed.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-207, 16-4-210, 16-4-401, 16-4-402, 16-4-414, 16-4-417, 16-4-420, 16-4-501, 16-4-502, MCA

42.12.133 CONCESSION AGREEMENTS (1) remains as proposed.

(2) All new concession agreements must be submitted to the department for review and approval prior to their execution or effective date and must include the following:

(a) a completed concession agreement request form provided by the department and the one-time processing fee described in ARM 42.12.111;

(b) a copy of the proposed floor plan; ~~and~~

(c) any additional documentation the department deems reasonably necessary to approve the concession arrangement; and

(d) a completed alteration request form if the concessionaire's area will change the licensee's current floor plan that is on file with the department.

(3) The concession agreement must provide that licensee and concessionaire agree:

(a) through (c) remain as proposed.

(d) except for concessionaires who have been approved by the department as a location manager, alcoholic beverages may not be ordered, purchased, or received by the concessionaire;

(e) through (6) remain as proposed.

AUTH: 16-1-303, 16-4-418, MCA

IMP: 16-3-305, 16-3-311, 16-4-401, 16-4-402, MCA

42.12.209 TRANSFER OF A LICENSE TO ANOTHER PERSON

(1) remains as proposed.

(2) ~~An~~ Except as allowed in ARM 42.12.118, an ownership interest may not be transferred until an application reflecting the proposed transfer is submitted to the department and the department approves the application.

(3) through (11) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-4-401, 16-4-402, MCA

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) and (2) remain as proposed.

(3) The department may use a range of progressive and proportional penalties for any combination of violations of any laws, ordinances, and rules. The progressive penalty schedule is not an exhaustive list of the grounds for administrative action. The schedule does not preclude the department's use of discretion to propose a penalty greater or less than those listed based upon aggravating or mitigating circumstances, non-exhaustive examples of which are described in (10) and (11). For purposes of determining penalties under the progressive penalty schedule, the department uses a three-year lookback. Proposed penalties are assessed based upon the date the violation occurs. For violations that occur over time, such as an undisclosed ownership interest, the violation date shall be the date the department issues its notice of proposed department action. The department may seek license revocation based upon a combination of any four violations during a three-year period.

Progressive Penalty Schedule

Violation	1st Offense	2nd Offense	3rd Offense	4th Offense
Sale to Underage Person	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Sale to Intoxicated Person	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Open after Hours	\$150	\$600	\$1,000/12-day Suspension	Revocation
Sale or Consumption after Hours	\$150	\$600	\$1,000/12-day Suspension	Revocation
Refilling of Bottles	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Unapproved Premises Alteration	\$300	\$600	\$1,000/12-day Suspension	Revocation
Undisclosed Location Manager	\$150	\$600	\$1,000/12-day Suspension	Revocation

Improper Use of Catering Endorsement	\$150	\$600	\$1,000/12-day Suspension	Revocation
Accept More than 7 Days Credit	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Extend More than 7 Days Credit	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Exceed Sample Room Service Limits	\$150	\$600	\$1,000/12-day Suspension	Revocation
Undisclosed Ownership Interest	\$1,500/Revocation			
Denial of Inspection of Premises or Records	\$1,500/Revocation			

(4) through (9) remain as proposed.

(10) Aggravating circumstances may result in the imposition of maximum monetary penalties, maximum suspension time, or revocation, and will not bind the department to the progressive penalty schedule.

(11) Aggravating circumstances include, but are not limited to:

(a) through (g) remain as proposed.

(12) Mitigating circumstances may result in the adjustment of monetary penalties, amount of suspension time, or revocation, and will not bind the department to the progressive penalty schedule. Mitigating circumstances include, but are not limited to:

(a) the admissions of either the licensee or concessionaire regarding violations of the code or a rule of the department prior to the department commencing administrative action against the licensee or concessionaire; or

(b) those instances provided in 16-4-406, MCA.

(13) remains as proposed.

AUTH: 16-1-303, 16-4-1009, MCA

IMP: 16-1-302, 16-3-301, 16-4-406, 16-4-1004, 16-4-1008, 16-6-314, MCA

7. 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: Mr. Silverman and Ms. Luther thanked the department for its efforts to put forward proposed rulemaking to implement House Bill 727 (2019)(HB 727)

and for the department's recent efforts working with the alcoholic beverages industry related to the Covid-19 pandemic.

RESPONSE 1: The department appreciates the comments.

COMMENT 2: Mr. Silverman questioned what the department means in ARM 42.12.101(4) when it proposed the word "immediately" when referring to when an applicant must notify the department of any changes in information or documents and provide the department with any corrected or updated information or documents. What time frame is acceptable so an applicant may avoid a return or denial of application?

RESPONSE 2: The department has further amended ARM 42.12.101(4) to replace the word "immediately" with "promptly" to communicate the necessity for applicants to notify the department of changes to the information and documents previously submitted as part of their application. The department further amends the rule to clarify that the application will be tolled until the updated or corrected information is submitted to the department.

COMMENT 3: Regarding the department's proposed amendment to ARM 42.12.101(6), Mr. Lawlor comments that the mandatory use of "shall subject the license to revocation," is not consistent with statute, and he states that the department's rationale for the amendment does not comport with department practice or 2-4-305(2), MCA. Mr. Lawlor suggests that "may, following an opportunity for hearing under the contested case provisions of the Montana Administrative Procedure Act and ARM 42.12.108, subject the license to revocation" is more appropriate.

RESPONSE 3: The department disagrees with Mr. Lawlor's comment that the proposed rule amendment in ARM 42.12.101(6) is not consistent with statute, contrary to department practice or that it does not substantially comply with MAPA. The amendment acknowledges that 16-4-417, MCA, includes unambiguous mandatory conditions following issuance of a license without premises approval. The department contends that stating an outcome for a licensee's failure to fulfill the stated conditions is appropriate since a retail license issued under 16-4-417, MCA, is also subject to other mandatory licensing provisions.

Regarding Mr. Lawlor's text suggestion, the department has taken it under advisement, but believes the additional text is not necessary and adopts the rule amendment as proposed. Other administrative rules in ARM Title 42, chapters 12 and 13 describe that a license is "subject to revocation" or "subject to administrative action," and ARM 42.12.101(6) is consistent with this construction. The language in (6) does not imply or conclude that the revocation of a license under 16-4-417, MCA, is certain, only that a license is subject to revocation; and the rule does not disregard a licensee's due process rights afforded under MAPA and the department's administrative rules (see e.g., 2-4-631 and 16-4-406, MCA; ARM 42.12.108).

The department also directs Mr. Lawlor to Response #4, which may provide additional information regarding the department's intended procedural application of a licensee's failure to meet the license conditions stated in 16-4-417, MCA.

COMMENT 4: Mr. Silverman asked the department to clarify the meaning of ARM 42.12.101(6) which provides for the failure of the licensee to fulfill the requirements of 16-4-417, MCA. Mr. Silverman asks whether any accommodation can be made for circumstances that could not be foreseen by the licensee, such as the recent viral pandemic.

RESPONSE 4: The department understands and appreciates the concerns that Mr. Silverman raises. However, 16-4-417, MCA, and ARM 42.12.101(6) do not provide for any extension of deadlines or consideration of any unforeseen matters. The department believes that should any future event like the viral pandemic occur, any temporary abeyance of statutory compliance would require an emergency declaration and grant of authority extending from the Governor or the Montana Legislature.

The department also directs Mr. Silverman to Response #3, which may provide additional information regarding the department's intended procedural application of a licensee's failure to meet the license conditions stated in 16-4-417, MCA.

COMMENT 5: Regarding the department's removal of the definition of "conditional approval letter" from ARM 42.12.106(12), Mr. Silverman states that there are license applicants who are currently on conditional approval and he asks if the department intends to "grandfather" pending applicants as of a particular date. He suggests that some solution is required since department licensing specialists have allegedly indicated that conditional approval is no longer available to applicants.

RESPONSE 5: The department acknowledges that there are a limited number of license applicants who have received conditional approval and continue to rely on that conditional approval after the effective date of House Bill 727, which removed conditional approval from 16-4-402, MCA. But given the limited and actively diminishing number of applicants impacted, and the proximity in time to each applicant's deadline, the department has determined it is not necessary to include a "grandfather" provision in rule. All pending conditional approvals and their respective premises completion and approval deadlines remain in effect. This is consistent and concurrent with the effective date of department's removal of the definition for "conditional approval letter" from ARM 42.12.106.

COMMENT 6: Ms. Luther suggests that ARM 42.12.133 should contain a list of specific requirements related to the concession agreement request form referenced in (2)(a) of the rule.

RESPONSE 6: Listing the specific requirements that will be found on the concession agreement request form is unnecessary. The department directs Ms. Luther to ARM 42.12.133(3), which includes information required by the concession

agreement. The concession agreement request form will primarily consist of the items listed in (a) through (g) of that section.

COMMENT 7: Mr. Silverman and Ms. Luther both asked the department to clarify whether the concession agreement fee referenced in ARM 42.12.133(2)(a) is the same processing fee that applicants pay when they submit the agreement to the department for approval.

Mr. Silverman also asked the department to clarify whether an applicant is required to pay an additional fee for processing a concession agreement when applying for the issuance or transfer of an alcoholic beverages license.

RESPONSE 7: The concession agreement fee referenced in ARM 42.12.133(2)(a) is not a new fee. This is the \$100 processing fee that is currently provided for in ARM 42.12.111.

As to Mr. Silverman's question about whether a concession agreement processing fee is necessary when submitting an alcoholic beverages license application, the department acknowledges that the answer is somewhat fact-dependent. For example: if the seller of a license has a concession arrangement incorporated into the business transaction, the department will want a new concession agreement form to be submitted by the buyer to reflect that the buyer is agreeing to the terms on the form rather than assuming the seller's terms. In this case, the \$100 fee is applicable. However, if shareholders in a corporate licensee sell and purchase shares between themselves, that would not require a new concession agreement form and fee.

COMMENT 8: Mr. Lawlor questioned in ARM 42.12.133(2)(b) whether the requirement for "a copy of the proposed floor plan" eliminates the need for an existing licensee to also provide an alteration request if the new concession agreement results in an expanded or changed premises. If so, additional clarification in the rule reflecting that part of the process is suggested.

RESPONSE 8: The alteration request form is required when an existing licensee proposes to enter into a concession agreement that would result in an expansion of the licensee's current floor plan that is on file and approved by the department. The department has further amended ARM 42.12.133(2) to clarify this requirement.

COMMENT 9: Ms. Luther comments that the amendment proposed as ARM 42.12.133(2)(c) is overbroad in its request of information.

RESPONSE 9: While the department understands Ms. Luther's concerns about the potential scope of information and document requests, the department contends that concession agreement terms and permissible operational arrangements with non-licensees are often fact-dependent, and the rule cannot provide a detailed list of items of information or documents for reviewing and approving concession

agreements. Notwithstanding, the department has amended (2)(c) to include the word "reasonably" before "necessary."

COMMENT 10: Messrs. Silverman and Iverson, and Ms. Luther, all commented with concerns regarding the department's wording in proposed ARM 42.12.133(3)(d). The commenters contend that the rule text does not acknowledge when a concessionaire also functions as the manager of licensee. The commenters suggest additional revisions are necessary to clarify that a non-licensed entity manager, such as a concessionaire, would continue to be permitted to order, purchase, or receive alcoholic beverages.

RESPONSE 10: The department has amended ARM 42.12.133(3)(d), upon adoption, to clarify that individuals who have been department-approved as a location manager of the license may order, purchase, and receive alcoholic beverages.

COMMENT 11: Mr. Lawlor comments that the department's proposal to strike the wording "to a new owner" from ARM 42.12.209(2) would make this rule incorrect and inconsistent with ARM 42.12.118(2). Further, he states that the department is mistaken in its assertion that, "[t]he required application to transfer ownership is applicable not only to new ownership but also when existing owners are changing ownership percentages." The MABC does not require preapproval for all changes of ownership percentages among existing approved owners, and ARM 42.12.118(2) expressly allows transfers among existing owners without department preapproval in certain circumstances. The wording "to a new owner" should remain in ARM 42.12.209(2).

RESPONSE 11: Based on Mr. Lawlor's comment, the department has amended ARM 42.12.209 to reference the exception for the allowable license modifications found in ARM 42.12.118(2).

COMMENT 12: Mr. Silverman commented to the department's proposed amendments to ARM 42.13.101 which implement HB 727. Mr. Silverman questions what due process rights will be extended to concessionaires found to be in violation of the alcoholic beverage code. Mr. Silverman analogizes to department actions against a licensee that provide due process and a right to have violations heard before an impartial hearings examiner.

As an extension of this comment, Mr. Silverman questions how the revocation of the concession agreement would work.

RESPONSE 12: Pursuant to 16-4-406(2), MCA, concessionaires who are facing a proposed department action for a violation of the Montana Alcoholic Beverage Code or a rule of the department, are awarded an opportunity to a hearing under the Montana Administrative Procedure Act. This is also the case if the department proposes to revoke a concession agreement.

COMMENT 13: Mr. Silverman comments that ARM 42.13.101(11) references aggravating circumstances, but does not mention the counterpart, mitigating circumstances. Mr. Silverman suggests that mitigating circumstances should be added to the rule, as it is in 16-4-406, MCA.

RESPONSE 13: The department agrees with Mr. Silverman that 16-4-406, MCA, contains references and examples of both aggravating and mitigating circumstances for the department to consider in violation matters. However, Mr. Silverman is incorrect that ARM 42.13.101 does not acknowledge mitigating circumstances at all, as current (3) provides that the department may weigh mitigating circumstances as well as aggravating circumstances against the penalties stated in the progressive penalty schedule.

As recent as October 2014, ARM 42.13.101 contained mitigating circumstances language. However, the department adopted rule amendments to ARM 42.13.101, under MAR Notice No. 42-2-921, which included the removal of text determined to be redundant to statute in light of the department's statutory mandate to consider aggravating and mitigating circumstances for all violations.

Notwithstanding the justification for the department's 2014 amendments to ARM 42.13.101, the department agrees to amend (3), (10), and (11) upon adoption of this rulemaking, for increased clarity and transparency, and to add a complementing reference to 16-4-406, MCA, and mitigating circumstances language.

COMMENT 14: Ms. Luther requests clarification under ARM 42.13.101 when certain enforcement actions would be taken against the licensee, the concessionaire, or both, or who the responsible party ultimately is.

RESPONSE 14: Because each proposed violation is unique, the department cannot generally assign responsibility without first conducting a thorough investigation and review of the facts surrounding the proposed violation. That information will determine whether administrative action will be pursued against the licensee, the concessionaire, or both.

/s/ Todd Olson

Todd Olson
Rule Reviewer

/s/ Gene Walborn

Gene Walborn
Director of Revenue

Certified to the Secretary of State June 16, 2020.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the repeal of	)	NOTICE OF REPEAL OF
Temporary Emergency Rule I	)	TEMPORARY EMERGENCY RULE
pertaining to Electronic Notary)	
Stamps)	

TO: All Concerned Persons

1. On April 17, 2020, the Secretary of State published MAR Notice No. 44-2-238 regarding the adoption of a temporary emergency rule at page 704 of the 2020 Montana Administrative Register, Issue Number 7. The temporary emergency rule was originally filed on April 8, 2020, and became effective on that date.

2. The conditions described in the Governor's March 15, 2020 directive no longer exist, and on May 19, 2020, the Governor issued a new directive establishing conditions for Phase Two. The Office of the Secretary of State has determined that the temporary emergency rule is no longer needed. The Office of the Secretary of State has an immediate effective date based on a request from the legislature.

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

4. The Office of the Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State to advise us of the nature of the accommodation that you need. Please contact Austin James, telephone (406) 444-6197; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail Austin.James@mt.gov.

5. The repeal of the temporary emergency rule is effective June 18, 2020.

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

/s/ Austin James
Austin James
Rule Reviewer
Attorney

/s/ Dana Corson
Dana Corson
Director
Office of Secretary of State

Dated June 18, 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 March 31, 2020. This table includes notices in which those rules adopted during the period December 27, 2019, through June 12, 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 March 31, 2020, 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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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 May 2020 appear. Potential vacancies from July 1, 2020 through September 30, 2020, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of June 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 MAY 2020

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Barbers and Cosmetologists			
Ms. Lynn Startin	Governor	Mace	5/15/2020
Missoula			10/1/2021
Qualifications (if required): Cosmetologist			
Board of Chiropractors			
Dr. Julie Murack	Governor	Pezo	5/1/2020
Conrad			1/1/2023
Qualifications (if required): Licensed Chiropractor			
Board of Dentistry			
Mr. Allen L. Casteel	Governor	Christenot	5/15/2020
Great Falls			4/1/2022
Qualifications (if required): Denturist			
Board of Hail Insurance			
Mr. Gary David Gollehon	Governor	Reappointed	5/1/2020
Brady			5/1/2023
Qualifications (if required): Public Member			
Board of Livestock			
Ms. Wendy Palmer	Governor	Scully	5/29/2020
Raynesford			3/1/2025
Qualifications (if required): Cattle Producer			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2020

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Livestock Cont.			
Mr. Gilles Stockton	Governor	Lehfeldt	5/29/2020
Grass Range			3/1/2025
Qualifications (if required): Sheep Producer			
Board of Nursing Home Administrators			
Ms. Kathryn Beaty	Governor	Reappointed	5/1/2020
Hamilton			6/1/2025
Qualifications (if required): Nursing Home Administrator			
Board of Outfitters			
Ms. Marcia Brownlee	Governor	French	5/15/2020
Missoula			10/1/2020
Qualifications (if required): Member of the general public			
Mr. Todd Clifford Earp	Governor	Reappointed	5/15/2020
Corvallis			10/1/2022
Qualifications (if required): Outfitter licensed to provide big game hunting services			
Board of Plumbers			
Mr. Jeffery A. Gruizenga	Governor	Reappointed	5/1/2020
Billings			5/1/2024
Qualifications (if required): Registered Professional Engineer			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2020

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Public Education			
Mr. Jeremiah C. Lynch	Governor	Stearns	5/1/2020
Missoula			2/1/2027
Qualifications (if required): District 1 and Democrat			
Board of Real Estate Appraisers			
Ms. Julie A. Forbes	Governor	Stevens	5/15/2020
Jefferson City			5/1/2023
Qualifications (if required): Licensed or certified real estate appraiser			
Mr. Gregory A. Thornquist	Governor	Reappointed	5/15/2020
Helena			5/1/2023
Qualifications (if required): Licensed or certified real estate appraiser			
Board of Realty Regulation			
Ms. Julie Lingle Gardner	Governor	Reappointed	5/15/2020
Missoula			5/1/2024
Qualifications (if required): Licensed real estate broker, salesperson, or property manager			
Board of Veterans Affairs			
Dr. Daniel Edelman	Governor	Jourdan	5/1/2020
Billings			8/1/2022
Qualifications (if required): Region 4 Veteran			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2020

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Burial Preservation Board			
Ms. Jessica Bush	Governor	Wilmoth	5/1/2020
Helena			9/1/2021
Qualifications (if required): Representative of the Montana State Historical Preservation Officer			
Ms. Skye Gilham	Governor	Reappointed	5/1/2020
Cut Bank			9/1/2021
Qualifications (if required): Physical Anthropologist			
Mr. Kenneth Weatherwax	Governor	Murray	5/1/2020
Browning			9/1/2021
Qualifications (if required): Representative of the Blackfeet Nation			
Ground Water Assessment Steering Council			
Mr. Mark Lee Runkle	Governor	Cooney	5/1/2020
Clancy			7/1/2021
Qualifications (if required): Development Community Representative			
Heritage Preservation and Development Commission			
Mr. Jeffrey Ewelt	Governor	Reappointed	5/15/2020
Billings			5/1/2023
Qualifications (if required): Member of the Tourism Advisory Council			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2020

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Heritage Preservation and Development Commission Cont.			
Mr. Timothy Joseph Lehman Billings	Governor	Reappointed	5/15/2020 5/1/2023
Qualifications (if required): Montana Historian			
Historical Preservation Review Board			
Ms. Patricia Casne Helena	Governor	Reappointed	5/1/2020 10/1/2023
Qualifications (if required): Member of the public			
Mr. Nicholas Alexander Kujawa Missoula	Governor	Urbaniak	5/1/2020 10/1/2023
Qualifications (if required): Member of the public			
Mrs. Kelly Anne Elizabeth Terry Lewistown	Governor	Hronek	5/1/2020 10/1/2023
Qualifications (if required): Member of the public			
Invasive Species Council			
Councilman Martin Charlo Pablo	Governor	Clairmont	5/1/2020 5/9/2021
Qualifications (if required): Representative of the Confederated Salish and Kootenai Tribes			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2020

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Alfalfa Seed Committee			
Mr. Thomas Matchett	Governor	Reappointed	5/29/2020
Billings			12/1/2022
Qualifications (if required): Actively engaged in growing alfalfa			
Mr. Thomas M. Neibur	Governor	Reappointed	5/29/2020
Malta			12/1/2022
Qualifications (if required): Actively engaged in the growing of alfalfa seed			
Montana Oilseed Advisory Committee			
Mr. Patrick Carr	Governor	None Stated	5/29/2020
Moccasin			5/15/2021
Qualifications (if required): Associate Professor of Cropping Systems at MSU			
Mr. Patrick Field	Governor	None Stated	5/29/2020
Pendroy			5/15/2021
Qualifications (if required): Producer			
Mr. Dale Flikkema	Governor	None Stated	5/29/2020
Bozeman			5/15/2021
Qualifications (if required): Producer			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2020

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Oilseed Advisory Committee Cont.			
Mr. Don Nagy	Governor	None Stated	5/29/2020
Sunburst			5/15/2021
Qualifications (if required):	Producer		
Mr. Casey Nickol	Governor	None Stated	5/29/2020
Shelby			5/15/2021
Qualifications (if required):	Producer		
Mr. Jeremiah Rhines	Governor	None Stated	5/29/2020
Sidney			5/15/2021
Qualifications (if required):	Producer		
Ms. Jeannie Rude	Governor	None Stated	5/29/2020
Sheridan			5/15/2021
Qualifications (if required):	PRO Co-op Agronomist, Ex-Officio		
Director Ben Thomas	Governor	None Stated	5/29/2020
Helena			5/15/2021
Qualifications (if required):	Director of the Department of Agriculture		

EXECUTIVE BRANCH APPOINTEES FOR MAY 2020

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Unmanned Aerial Systems Council			
Mr. Mike Bousliman Helena	Governor	None Stated	5/15/2020 12/31/2020
Qualifications (if required): Department of Transportation Designee			
Mr. Gordy Conn Missoula	Governor	None Stated	5/15/2020 12/31/2020
Qualifications (if required): Department of Revenue Designee			
Ms. Jennifer Fowler Missoula	Governor	None Stated	5/15/2020 12/31/2020
Qualifications (if required): Representative of the Montana University System			
Mr. Kreh Germaine Helena	Governor	None Stated	5/15/2020 12/31/2020
Qualifications (if required): Dept. of Natural Resources and Conservation Designee			
Mr. Butch Huseby Helena	Governor	None Stated	5/15/2020 12/31/2020
Qualifications (if required): Dept. of Justice Designee			
Mr. Weston Irr Livingston	Governor	None Stated	5/15/2020 12/31/2020
Qualifications (if required): Private Industry			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2020

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Unmanned Aerial Systems Council Cont.			
Mr. Dan Olson Helena Qualifications (if required): Dept. of Livestock Designee	Governor	None Stated	5/15/2020 12/31/2020
Director Jason Smith Helena Qualifications (if required): Office of Indian Affairs	Governor	None Stated	5/15/2020 12/31/2020
Mr. James Strait Helena Qualifications (if required): Dept. of Environmental Quality Designee	Governor	None Stated	5/15/2020 12/31/2020
Mr. Paul Szczepaniak Helena Qualifications (if required): Dept. of Corrections Designee	Governor	None Stated	5/15/2020 12/31/2020
Mr. Dustin Temple Helena Qualifications (if required): Dept. of Fish, Wildlife and Parks Designee	Governor	None Stated	5/15/2020 12/31/2020
Ms. Patty White Helena Qualifications (if required): Dept. of Commerce Designee	Governor	None Stated	5/15/2020 12/31/2020

EXECUTIVE BRANCH APPOINTEES FOR MAY 2020

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Unmanned Aerial Systems Council Cont.			
Mr. R. Stephen White Bozeman	Governor	None Stated	5/15/2020 12/31/2020
Qualifications (if required): Private Industry			
State Emergency Response Commission			
Mr. Daniel Smith Great Falls	Governor	Turner	5/1/2020 10/1/2023
Qualifications (if required): Representative of a Law Enforcement Organization			
State Rehabilitation Council			
Mr. Scott Eychner Helena	Governor	Trent	5/1/2020 10/1/2020
Qualifications (if required): State Workforce Innovation Board			
Ms. Cheri Reed-Anderson Miles City	Governor	Hodge	5/1/2020 10/1/2020
Qualifications (if required): Vocation Rehabilitation Counselor			
Statewide Interoperability Communications Advisory Council			
Mrs. Kimberly Burdick Fort Benton	Governor	None Stated	5/15/2020 5/1/2022
Qualifications (if required): Representative of Public Safety Answering Point			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2020

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Statewide Interoperability Communications Advisory Council Cont.			
Sheriff Leo Dutton	Governor	None Stated	5/15/2020
Helena			5/1/2022
Qualifications (if required): Representative of Law Enforcement			
Mr. Mike Feldman	Governor	None Stated	5/15/2020
Helena			5/1/2022
Qualifications (if required): Representative of Land Mobile Radio			
Mr. Tom Frieders	Governor	None Stated	5/15/2020
Billings			5/1/2022
Qualifications (if required): Representative of Alerts, Warnings and Notifications			
Ms. Shari Graham	Governor	None Stated	5/15/2020
Helena			5/1/2022
Qualifications (if required): Representative of Emergency Medical Services			
Mr. Andy Hanks	Governor	None Stated	5/15/2020
Helena			5/1/2022
Qualifications (if required): Representative of Cybersecurity			
Mr. Burke Honzel	Governor	None Stated	5/15/2020
Fort Harrison			5/1/2022
Qualifications (if required): Representative of Broadband			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2020

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Statewide Interoperability Communications Advisory Council Cont.			
Mr. Ken Wood	Governor	None Stated	5/15/2020
Helena			5/1/2022
Qualifications (if required): Representative of Fire Service			
Trauma Care Committee			
Ms. Brenda Koessl	Governor	Waller	5/1/2020
Glasgow			11/1/2020
Qualifications (if required): Montana Hospital Assoc. (MHA) Representative			

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Best Beginnings Advisory Council		
Ms. Lesa Evers, Helena Qualifications (if required): Tribal Relations	Governor	7/1/2020
Mr. Martin Blair, Missoula Qualifications (if required): Autism Spectrum Disorder and Other Developmental Disabilities "Act Early Initiative"	Governor	7/1/2020
Ms. Lucinda Burns, Lame Deer Qualifications (if required): Northern Cheyenne Tribe Child Care and Development Fund Program	Governor	7/1/2020
Ms. Barbara Burton, Helena Qualifications (if required): Residential Home for Pregnant and Parenting Teens	Governor	7/1/2020
Ms. Patty Butler, Helena Qualifications (if required): Early Childhood Services Bureau	Governor	7/1/2020
Ms. Dannelle Hay, Box Elder Qualifications (if required): Chippewa Cree Tribe	Governor	7/1/2020
Ms. Margaret Big Leggins, Poplar Qualifications (if required): Fort Peck Assiniboine & Sioux Tribes	Governor	7/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Best Beginnings Advisory Council Cont.		
Ms. Terri Barclay, Helena Qualifications (if required): Office of Public Instruction, Early Grades	Governor	7/1/2020
Ms. Collete Box, Kalispell Qualifications (if required): Child Care Center	Governor	7/1/2020
Ms. Sara Cease, Fort Harrison Qualifications (if required): Military Child Care Programs	Governor	7/1/2020
Ms. Jeanne Christopher, Ronan Qualifications (if required): Confederated Salish and Kootenai Tribes Community	Governor	7/1/2020
Dr. Kristen Day, Bozeman Qualifications (if required): Pediatrician	Governor	7/1/2020
Ms. Marion Denk, Billings Qualifications (if required): Montana Child Care Association	Governor	7/1/2020
Ms. Heather Denny, Helena Qualifications (if required): Title 1 Neglected and Delinquent Homeless Children and Youth	Governor	7/1/2020
Ms. Virginia Ervin, Missoula Qualifications (if required): Parent	Governor	7/1/2020
Ms. Tara Ferriter-Smith, Helena Qualifications (if required): Montana Preschool Development Grant	Governor	7/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Best Beginnings Advisory Council Cont.		
Ms. Christy Hill, Helena Qualifications (if required): Montana Early Childhood Project, Pyramid Model Coordinator	Governor	7/1/2020
Ms. Lonna Johnson, Box Elder Qualifications (if required): Chippewa Cree Tribal Community	Governor	7/1/2020
Ms. Mandy Johnstone, Wilsall Qualifications (if required): Child Care Family	Governor	7/1/2020
Mr. Tyson Krinke, Bozeman Qualifications (if required): Community Coalitions	Governor	7/1/2020
Ms. Beverly Matsko, Great Falls Qualifications (if required): Head Start Association	Governor	7/1/2020
Ms. Ashley McAdam, Willow Creek Qualifications (if required): Parent	Governor	7/1/2020
Ms. Danni McCarthy, Helena Qualifications (if required): Preschool and Special Education School Improvement	Governor	7/1/2020
Ms. Terry Minow, Helena Qualifications (if required): Organized Labor-Union MEA-MFT	Governor	7/1/2020
Ms. Jessica Nicklaus, Kalispell Qualifications (if required): Parent	Governor	7/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Best Beginnings Advisory Council Cont.		
Mr. Aryon Parks, Browning Qualifications (if required): Parent	Governor	7/1/2020
Ms. Blossom Quisno, Harlem Qualifications (if required): Fort Belknap Tribal Community	Governor	7/1/2020
Ms. Kathy Rich, Helena Qualifications (if required): Head Start State Collaboration	Governor	7/1/2020
Ms. Anneliese Ripley, Dillon Qualifications (if required): Early Childhood Higher Education	Governor	7/1/2020
Ms. Tawnya Rupe, Wilsall Qualifications (if required): Philanthropy	Governor	7/1/2020
Ms. Michelle Sexton, East Helena Qualifications (if required): Child Care Group Home	Governor	7/1/2020
Mr. Jeffrey Smith, St. Ignatius Qualifications (if required): Child Care Group Home	Governor	7/1/2020
Ms. Wendy Studt, Helena Qualifications (if required): Montana Milestones/Part C Early Intervention Program Coordinator	Governor	7/1/2020
Ms. Mikayla Three Irons, Hardin Qualifications (if required): Parent	Governor	7/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Best Beginnings Advisory Council Cont.		
Ms. Stephanie Wilkins, Helena Qualifications (if required): Temporary Assistance for Needy Families Program	Governor	7/1/2020
Ms. Viola Wood, Poplar Qualifications (if required): Fort Peck Tribal Community	Governor	7/1/2020
Dr. Christine Lux, Bozeman Qualifications (if required): Early Childhood Higher Education	Governor	7/1/2020
Ms. Karen Shevlin, Helena Qualifications (if required): Maternal and Early Childhood Home Visiting Section	Governor	7/1/2020
Ms. Laurie Bishop, Bozeman Qualifications (if required): Montana After School Alliance	Governor	7/1/2020
Ms. Darla Dexter, Helena Qualifications (if required): Montana Project LAUNCH Young Child Wellness	Governor	7/1/2020
Ms. Kalie Hansen, Kalispell Qualifications (if required): Child and Adult Care Food Program Sponsor	Governor	7/1/2020
Ms. Brenda Hergott, Butte Qualifications (if required): Child Care Resource and Referral Network	Governor	7/1/2020
Ms. Leigh Ann Holmes, Helena Qualifications (if required): Quality Assurance Division Licensure Bureau	Governor	7/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Best Beginnings Advisory Council Cont.		
Ms. Janelle Jefferson Mays, Crow Agency Qualifications (if required): Director Song Bird Daycare	Governor	7/1/2020
Ms. Caitlin Jensen, Helena Qualifications (if required): B-5 Initiative	Governor	7/1/2020
Ms. Amelea Kim, Helena Qualifications (if required): Montana State Library	Governor	7/1/2020
Ms. Leslie Lee, Helena Qualifications (if required): Child and Adult Care Food Program Manager	Governor	7/1/2020
Ms. Lanessa Littrell, Helena Qualifications (if required): Parent	Governor	7/1/2020
Ms. Heather O'Loughlin, Helena Qualifications (if required): Montana Budget and Policy Center	Governor	7/1/2020
Ms. Kathy Olson, Billings Qualifications (if required): Child Care Center	Governor	7/1/2020
Ms. Megan Peel, Helena Qualifications (if required): Children's Mental Health Bureau	Governor	7/1/2020
Ms. Brooke Pickett, Helena Qualifications (if required): Child and Adult Care Food Program	Governor	7/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Best Beginnings Advisory Council Cont.		
Ms. Kristen Rogers, Helena Qualifications (if required): Family and Community Health Bureau	Governor	7/1/2020
Ms. Rhiannon Shook, Lewistown Qualifications (if required): Montana Association for the Education of Young Children	Governor	7/1/2020
Ms. Siri Smillie, Helena Qualifications (if required): Governor's Office	Governor	7/1/2020
Board of Funeral Service		
Mr. Michael Thompson, Ronan Qualifications (if required): Licensed crematory	Governor	7/1/2020
Board of Hearing Aid Dispensers		
Mr. Edward Eaton, Helena Qualifications (if required): Public member who regularly uses a hearing aid	Governor	7/1/2020
Mr. Michael Spinti, Great Falls Qualifications (if required): Licensed Hearing Aid Dispenser	Governor	7/1/2020
Mr. Dennis Gene Scoggins Sr., Lima Qualifications (if required): Public Member	Governor	7/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Medical Examiners		
Dr. James Feist, Bozeman	Governor	9/1/2020
Qualifications (if required): Doctor of Medicine		
Board of Nursing		
Ms. Shari Brownback, Helena	Governor	7/1/2020
Qualifications (if required): Licensed Practical Nurse		
Board of Pharmacy		
Mr. Michael Bertagnolli, Three Forks	Governor	7/1/2020
Qualifications (if required): Licensed pharmacist		
Board of Physical Therapy Examiners		
Mrs. Holly Claussen, Missoula	Governor	7/1/2020
Qualifications (if required): Licensed Physical Therapist		
Board of Private Alternative Adolescent Residential or Outdoor Programs		
Senator Trudi Schmidt, Great Falls	Governor	7/1/2020
Qualifications (if required): General public		
Dr. John Santa, Marion	Governor	7/1/2020
Qualifications (if required): Adolescent Treatment Program Residential		
Ms. Penny James, Trout Creek	Governor	7/1/2020
Qualifications (if required): Adolescent Treatment Program Residential		

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Private Alternative Adolescent Residential or Outdoor Programs Cont.		
Ms. Pamela Carbonari, Kalispell Qualifications (if required): General Public	Governor	7/1/2020
Mr. Ricky A. Johnson, Kalispell Qualifications (if required): Adolescent Treatment Program Residential	Governor	7/1/2020
Board of Private Security		
Ms. Holly Dershem-Bruce, Glendive Qualifications (if required): Member of the public	Governor	8/1/2020
Mr. James Thomas, Canyon Creek Qualifications (if required): Member of the Montana Public Safety Officer Standards and Training (POST) Council	Governor	8/1/2020
Board of Psychologists		
Ms. Rebecca Ann Bird, Billings Qualifications (if required): General public	Governor	9/1/2020
Board of Public Accountants		
Ms. Lucinda Willis, Polson Qualifications (if required): Certified public accountant actively engaged in the practice of public accounting	Labor and Industry	7/1/2020
Mr. John C. Melton, Chester Qualifications (if required): Public Representative	Governor	7/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Radiologic Technologists		
Ms. Barbara Anderson, Culbertson Qualifications (if required): Licensed radiologic technologist	Governor	7/1/2020
Mr. Jeffry Lindenbaum, Billings Qualifications (if required): Radiologist	Governor	7/1/2020
Mr. Nathan David Richardson, Kalispell Qualifications (if required): Licensed radiologic technologist	Governor	7/1/2020
Board of Sanitarians		
Mr. Eugene Pizzini, Helena Qualifications (if required): Public at large	Governor	7/1/2020
Mrs. Tracy Nielsen, Billings Qualifications (if required): Member from the public	Governor	7/1/2020
Mr. Clayton Scott Vincent, Havre Qualifications (if required): Registered Sanitarian	Governor	7/1/2020
Board of Trustees of the Montana Historical Society		
Mr. Robert J. Phares, Clyde Park Qualifications (if required): Public Representative	Governor	7/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Veterans Affairs		
Mr. Bruce W. Knutson, Helena Qualifications (if required): Representative of U.S. Senator Jon Tester Non-Voting Member	Governor	8/1/2020
Mr. Peter Olson, Culbertson Qualifications (if required): Region 5 Veteran	Governor	8/1/2020
Mr. Denny Lenoir, Helena Qualifications (if required): Representative of U.S. Senator Steve Daines Non-Voting Member	Governor	8/1/2020
Mr. Anson Nygaard, Billings Qualifications (if required): U.S. Senator Jon Tester Representative	Governor	8/1/2020
Burial Preservation Board		
Mr. Carl Davis, Missoula Qualifications (if required): Representative of the Montana Archaeological Association	Governor	9/1/2020
Mr. Morris Belgard, Harlem Qualifications (if required): Representative of the Fort Belknap Indian Community	Governor	9/1/2020
Mr. Gregory Kirkwood, Malta Qualifications (if required): Representative of the Montana Coroner's Association	Governor	9/1/2020
Mr. Richard Parenteau, Great Falls Qualifications (if required): Representative of the Little Shell Tribe	Governor	9/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Commission on Community Service		
Ms. Danette Rector, Missoula Qualifications (if required): Representative of a nonprofit who works with Senior Citizens	Governor	7/1/2020
Mr. Charles Wetherington, Billings Qualifications (if required): Public Member	Governor	7/1/2020
Mr. Eric Strauss, Clancy Qualifications (if required): State agency representative for labor	Governor	7/1/2020
Ms. Pamela J. Carbonari, Kalispell Qualifications (if required): Representative of a nonprofit that works with Senior Citizens	Governor	7/1/2020
Committee on Telecommunications Access Services for Persons With Disabilities		
Ms. Marilyn Delores Daumiller, Helena Qualifications (if required): Person without a disability	Governor	7/1/2020
Mr. Andrew S. Arnot, Missoula Qualifications (if required): Independent Service Provider	Governor	7/1/2020
Dr. Lisa Claire Cannon, Clancy Qualifications (if required): Licensed Audiologist	Governor	7/1/2020
Mr. Cameron C. Tulloch, Belgrade Qualifications (if required): Person with disability, deaf or hard-of-hearing	Governor	7/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Committee on Telecommunications Access Services for Persons With Disabilities Cont. Ms. Barbara Varnum, Polson Qualifications (if required): Person without a disability, senior citizen	Governor	7/1/2020
Community Service Commission Ms. Karen Lazetich Moses, Billings Qualifications (if required): Public Representative	Governor	7/1/2020
Equal Pay for Equal Work Task Force Commissioner Tom Lopach, Helena Qualifications (if required): Co-Chair	Governor	8/1/2020
Commissioner Brenda Nordlund, Helena Qualifications (if required): Co-Chair	Governor	8/1/2020
Future Fisheries Review Panel Ms. Nancy Sue Winslow, Missoula Qualifications (if required): Expertise in mining reclamation techniques	Governor	7/1/2020
Mr. James Stone, Ovando Qualifications (if required): Expertise in irrigated agriculture	Governor	7/1/2020
Mr. William Mytton, Absarokee Qualifications (if required): Expertise in commercial agriculture	Governor	7/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Get Outdoors Montana (GO-MT) Advisory Council		
Mr. Joseph Willauer, Butte Qualifications (if required): Recreation user and interest groups	Governor	9/1/2020
Mr. Marty Daniel Bannon, Great Falls Qualifications (if required): Recreation user and interest groups	Governor	9/1/2020
Mr. A. Lee Boman, Seeley Lake Qualifications (if required): Recreation user and interest groups	Governor	9/1/2020
Dr. Kayje Booker, Missoula Qualifications (if required): Conservation and stewardship organizations	Governor	9/1/2020
Ms. Diane Leigh Bristol, Belgrade Qualifications (if required): Outdoor recreation industry	Governor	9/1/2020
Mr. George H. Corn, Hamilton Qualifications (if required): Recreation user and interest groups	Governor	9/1/2020
Ms. Jennifer Doherty, Missoula Qualifications (if required): Conservation and stewardship organizations	Governor	9/1/2020
Mr. Andrew McKean, Glasgow Qualifications (if required): Recreation user and interest groups	Governor	9/1/2020
Dr. Scott Mickelsen, Glendive Qualifications (if required): Recreation user and interest groups	Governor	9/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Get Outdoors Montana (GO-MT) Advisory Council Cont.		
Mr. Kevin Nemeth, Billings Qualifications (if required): Recreation user and interest groups	Governor	9/1/2020
Mr. Jeffrey Todd Reed, Emigrant Qualifications (if required): Outdoor recreation industry	Governor	9/1/2020
Representative Tyson Running Wolf, Browning Qualifications (if required): Local, tribal, state and federally-employed land stewards	Governor	9/1/2020
Mr. Gray N. Thornton, Bozeman Qualifications (if required): Conservation and stewardship organizations	Governor	9/1/2020
Mr. Kendall Van Dyk, Helena Qualifications (if required): Conservation and stewardship organizations	Governor	9/1/2020
Ms. Kathy Weber Bates, Missoula Qualifications (if required): Outdoor recreation industry	Governor	9/1/2020
Mr. Onno Charles Wieringa, Hungry Horse Qualifications (if required): Outdoor recreation industry	Governor	9/1/2020
Governor's Advisory Council on Aging		
Mr. Robert C. Meyers, Great Falls Qualifications (if required): Public Representative	Governor	7/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Governor's Advisory Council on Aging Cont.		
Ms. Peggy Lynne Tombre, Bozeman Qualifications (if required): Public Representative	Governor	7/1/2020
Mr. Ryan Clark, Billings Qualifications (if required): Public Representative	Governor	7/1/2020
Mr. James E. (Curly) Burns, Helena Qualifications (if required): Public Representative	Governor	7/1/2020
Governor's Montana Forest Action Advisory Council		
Mr. Tony Incashola, Pablo Qualifications (if required): Confederated Salish and Kootenai Tribe Alternate	Governor	9/15/2020
Mr. Clarence Sivertsen, Belt Qualifications (if required): Representative of the Little Shell Chippewa Tribe	Governor	9/15/2020
Mr. Terry Spang, Lame Deer Qualifications (if required): Northern Cheyenne Tribal Representative	Governor	9/15/2020
Mr. William Walks Along, Lame Deer Qualifications (if required): Northern Cheyenne Alternate	Governor	9/15/2020
Mr. Jim Durglo, Pablo Qualifications (if required): Representative of the Confederated Salish and Kootenai Tribe	Governor	9/15/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Governor's Montana Forest Action Advisory Council Cont.		
Mr. Ray King, Harlem Qualifications (if required): Fort Belknap Community Alternate	Governor	9/15/2020
Councilman Warren Morin, Harlem Qualifications (if required): Representative of the Fort Belknap Community	Governor	9/15/2020
Grizzly Bear Conservation and Management Advisory Council		
Senator Lorents Grosfield, Big Timber Qualifications (if required): Livestock producer	Governor	8/31/2020
Mr. Bret N. Barney, Wyola Qualifications (if required): Livestock producer	Governor	8/31/2020
Mr. Chad Bauer, Missoula Qualifications (if required): Outdoor industry professional	Governor	8/31/2020
Dr. Darrin L. Boss, Havre Qualifications (if required): Hunter	Governor	8/31/2020
Mr. Jonathan Bowler, Condon Qualifications (if required): Conservation group	Governor	8/31/2020
Mrs. Trina Jo Bradley, Valier Qualifications (if required): Livestock producer	Governor	8/31/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Grizzly Bear Conservation and Management Advisory Council Cont.		
Ms. Caroline Byrd, Bozeman Qualifications (if required): Conservation group	Governor	8/31/2020
Ms. Michele Dieterich, Hamilton Qualifications (if required): Wildlife enthusiast	Governor	8/31/2020
Mrs. Erin Edge, Missoula Qualifications (if required): Conservation group	Governor	8/31/2020
Mr. Nick Gevock, Helena Qualifications (if required): Conservation organization	Governor	8/31/2020
Mr. Kameron Kelsey, Gallatin Gateway Qualifications (if required): Livestock producer	Governor	8/31/2020
Ms. Robyn King, Troy Qualifications (if required): Conservation group	Governor	8/31/2020
Mrs. Kristen Ellen Lime, Browning Qualifications (if required): Tribal member	Governor	8/31/2020
Mr. Cole Mannix, Helena Qualifications (if required): Conservation organization	Governor	8/31/2020
Mr. Heath Eric Martinell, Dell Qualifications (if required): Livestock producer	Governor	8/31/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Grizzly Bear Conservation and Management Advisory Council Cont.		
Mr. Chuck Roady, Columbia Falls Qualifications (if required): Community leader	Governor	8/31/2020
Mr. Gregory Oliver Schock, Saint Ignatius Qualifications (if required): Livestock producer	Governor	8/31/2020
Ms. Anne Schuschke, East Glacier Qualifications (if required): Outdoor industry professional	Governor	8/31/2020
Information Technology Managers Advisory Council		
Mr. Manuel Soto, Helena Qualifications (if required): Information Technology Manager	Governor	8/1/2020
Ms. Angela Riley, Helena Qualifications (if required): Information Technology Manager	Governor	8/1/2020
Ms. Christi Breland, Helena Qualifications (if required): Information Technology Manager	Governor	8/1/2020
Mr. John Daugherty, Helena Qualifications (if required): Information Technology Manager	Governor	8/1/2020
Ms. Kellee English, Helena Qualifications (if required): Information Technology Manager	Governor	8/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Information Technology Managers Advisory Council Cont.		
Mr. Kreh Germaine, Helena Qualifications (if required): Information Technology Manager	Governor	8/1/2020
Mr. Cody Jones, Boulder Qualifications (if required): Local Government Representative	Governor	8/1/2020
Ms. Kim Warren, Helena Qualifications (if required): Information Technology Manager	Governor	8/1/2020
Mr. Butch Huseby, Helena Qualifications (if required): Information Technology Manager	Governor	8/1/2020
Mr. John Straughn, Helena Qualifications (if required): Information Technology Manager	Governor	8/1/2020
Interagency Coordinating Council for State Prevention Programs		
Ms. Barbara A. Bessette, Great Falls Qualifications (if required): Experiences related to the private or nonprofit provision of prevention programs	Governor	7/1/2020
Ms. Shantelle Page Gaynor, Missoula Qualifications (if required): Experiences related to the private or nonprofit provision of prevention programs	Governor	7/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Agriculture Development Council		
Mr. Lars Wesley Hanson, Edgar Qualifications (if required): Actively engaged in agriculture	Governor	7/1/2020
Ms. Tara Mastel, Whitehall Qualifications (if required): Actively engaged in agriculture	Governor	7/1/2020
Ms. Patricia Quisno, Harlem Qualifications (if required): Actively engaged in agriculture	Governor	9/1/2020
Montana Climate Solutions Council		
Mr. Paul Tuss, Havre Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Mr. Frank Diego Rivas, Helena Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Director Martha Williams, Helena Qualifications (if required): Director of the Department of Fish, Wildlife and Parks	Governor	8/1/2020
Director Ben Thomas, Helena Qualifications (if required): Director of the Department of Agriculture	Governor	8/1/2020
Director John Lewis, Helena Qualifications (if required): Director of the Department of Administration	Governor	8/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Climate Solutions Council Cont.		
Mr. Patrick Holmes, Helena Qualifications (if required): Co-Chair, Governor's Office Representative	Governor	8/1/2020
Mr. Alan Ekblad, Helena Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Ms. Jennifer Anders, Helena Qualifications (if required): Northwest Power Planning Council Representative	Governor	8/1/2020
Mr. Tom Armstrong, Bozeman Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Mr. Scott Bischke, Bozeman Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Mr. Bill Bryan, Bozeman Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Ms. Amy Cilimburg, Missoula Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Ms. Sally Ericsson, Whitefish Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Ms. Kathy Hadley, Deer Lodge Qualifications (if required): Co-Chair, Member representing various geographic areas	Governor	8/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Climate Solutions Council Cont.		
Mr. Mark Haggerty, Bozeman Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Mr. David Hoffman, Helena Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Commissioner Galen Hollenbaugh, Helena Qualifications (if required): Director of the Department of Labor and Industry	Governor	8/1/2020
Ms. Kelsey Jensco, Missoula Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Mr. Chuck Magraw, Helena Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Ms. Jayne Marrow, Chinook Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Mr. Bruce Maxwell, Bozeman Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Director Shaun McGrath, Helena Qualifications (if required): Director of the Department of Environmental Quality	Governor	8/1/2020
Mr. Todd O'Hair, Helena Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Climate Solutions Council Cont.		
Mr. Alan Olson, Helena Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Ms. Caitlin Piserchia, Missoula Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
General Matthew Quinn, Fort Harrison Qualifications (if required): Director of the Department of Military Affairs	Governor	8/1/2020
Director Tara Rice, Helena Qualifications (if required): Director of the Department of Commerce	Governor	8/1/2020
Mr. Eric Somerfeld, Power Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Mr. Lee Spangler, Bozeman Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Ms. Tracy Stone Manning, Missoula Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Mr. Joe Thiel, Helena Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Mr. Steve Thompson, Butte Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Climate Solutions Council Cont.		
Director Mike Tooley, Helena Qualifications (if required): Director of the Department of Transportation	Governor	8/1/2020
Director John Tubbs, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	8/1/2020
Mr. Andrew Valainis, Missoula Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Mr. Gerald Wagner, Browning Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Ms. Charlene Waters Alden, Lame Deer Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Ms. Cathy Whitlock, Bozeman Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Mr. Gary Wiens, Great Falls Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Ms. Laura Wood Peterson, Billings Qualifications (if required): Member representing various geographic areas	Governor	8/1/2020
Commissioner Tom Lopach, Helena Qualifications (if required): Commissioner of the Department of Labor and Industry	Governor	8/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Climate Solutions Council Cont. Commissioner Brenda Nordlund, Helena Qualifications (if required): Commissioner of the Dept. of Labor and Industry	Governor	8/1/2020
Montana Forest Action Advisory Council Commissioner Carol Brooker, Thompson Falls Qualifications (if required): Federal, state, local and tribal governments	Governor	9/15/2020
Mr. Steve Hedstrom, Raynesford Qualifications (if required): Conservation Districts	Governor	9/15/2020
Mr. Jack Rich, Seeley Lake Qualifications (if required): Other relevant partners	Governor	9/15/2020
Mr. Mark Aagenes, Helena Qualifications (if required): Conservation Organizations	Governor	9/15/2020
Mr. Fred Bicha, Kalispell Qualifications (if required): Other relevant partners	Governor	9/15/2020
Ms. Jodi Bush, Helena Qualifications (if required): Federal, state, local, and tribal governments	Governor	9/15/2020
Mr. Tony Colter, Deer Lodge Qualifications (if required): Forest products industry	Governor	9/15/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Forest Action Advisory Council Cont.		
Mr. Tom DeLuca, Missoula Qualifications (if required): Other relevant partners	Governor	9/15/2020
Mr. Jim Durglo, Saint Ignatius Qualifications (if required): Federal, state, local, and tribal governments	Governor	9/15/2020
Ms. Erin Farris-Olsen, Helena Qualifications (if required): Collaborative and Watershed Councils	Governor	9/15/2020
Ms. Sonya Germann, Missoula Qualifications (if required): Federal, state, local, and tribal governments	Governor	9/15/2020
Mr. Tony Harwood, Polson Qualifications (if required): Other relevant partners	Governor	9/15/2020
Mr. Blake Henning, Missoula Qualifications (if required): Conservation organizations	Governor	9/15/2020
Mr. Donato Judice, Billings Qualifications (if required): Federal, state, local, and tribal governments	Governor	9/15/2020
Mr. Tim Love, Missoula Qualifications (if required): Collaborative and Watershed Councils	Governor	9/15/2020
Ms. Leanne Marten, Missoula Qualifications (if required): Federal, state, local, and tribal governments	Governor	9/15/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Forest Action Advisory Council Cont.		
Ms. Holly McKenzie, Columbia Falls Qualifications (if required): Private landowners	Governor	9/15/2020
Director Shaun McGrath, Helena Qualifications (if required): Federal, state, local, and tribal governments	Governor	9/15/2020
Mr. Jeff Mow, West Glacier Qualifications (if required): Federal, state, local, and tribal governments	Governor	9/15/2020
Mr. Pete Nelson, Bozeman Qualifications (if required): Conservation organization	Governor	9/15/2020
Commissioner Mark Peck, Libby Qualifications (if required): Federal, state, local, and tribal governments	Governor	9/15/2020
Mr. Gordy Sanders, Seeley Lake Qualifications (if required): Forest products industry	Governor	9/15/2020
Mr. Jeff Schmidt, Red Lodge Qualifications (if required): Recreation and tourism members	Governor	9/15/2020
Mr. Tom Schultz, Cour d'Alene, ID Qualifications (if required): Forest products industry	Governor	9/15/2020
Mr. Cameron Sholly, Yellowstone National Park Qualifications (if required): Federal, state, local, and tribal governments	Governor	9/15/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Forest Action Advisory Council Cont.		
Mr. Land Tawney, Missoula Qualifications (if required): Conservation organizations	Governor	9/15/2020
Mr. John Todd, Bozeman Qualifications (if required): Conservation organizations	Governor	9/15/2020
Mr. Jason Todhunter, Harlowton Qualifications (if required): Forest products industry	Governor	9/15/2020
Ms. Darcie Warden, Bozeman Qualifications (if required): Conservation Organizations	Governor	9/15/2020
Mr. Tom Watson, Bozeman Qualifications (if required): Federal, state, local, and tribal governments	Governor	9/15/2020
Director Martha Williams, Helena Qualifications (if required): Federal, state, local, and tribal governments	Governor	9/15/2020
Montana Historical Society Board of Trustees		
Mr. Jude Sheppard, Chinook Qualifications (if required): Public Representative	Governor	7/1/2020
Mr. Charles Sackett Johnson, Helena Qualifications (if required): Public Representative	Governor	7/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Organic Commodity Advisory Council		
Mr. Matt Johnson, Hinsdale Qualifications (if required): Producer	Governor	8/19/2020
Mr. Ty O'Connor, Broadus Qualifications (if required): Producer	Governor	8/19/2020
Ms. Catherine Odden, Dutton Qualifications (if required): At-Large	Governor	8/19/2020
Petroleum Tank Release Compensation Board		
Ms. Heather Marie Smith, Helena Qualifications (if required): Rep financial or banking industry; experience in small business or property loans	Governor	7/1/2020
Mr. Edward A. Thamke, Helena Qualifications (if required): Background in environmental regulation	Governor	7/1/2020
Resource Conservation Advisory Council		
Mr. Bob Schroeder, Florence Qualifications (if required): Western Montana	Governor	7/1/2020
Ms. Judi Knapp, Hysham Qualifications (if required): South Central Montana	Governor	7/1/2020
Ms. Gayla Wortman, Cascade Qualifications (if required): North Central Montana	Governor	7/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Resource Conservation Advisory Council Cont.		
Mr. Bob Breipohl, Saco Qualifications (if required): Eastern Montana	Governor	7/1/2020
Mr. O. Ramsey Offerdal, Conrad Qualifications (if required): North Central Montana	Governor	7/1/2020
State Banking Board		
Mr. Tony Joe Ennenga, Miles City Qualifications (if required): Member of the public	Governor	7/1/2020
Mr. Thomas R. Swenson, Missoula Qualifications (if required): Active Officer in state banks of Montana	Governor	7/1/2020
State Electrical Board		
Mr. Mel Medhus III, Kalispell Qualifications (if required): Master licensed electrical contractor	Governor	7/1/2020
State Workforce Innovation Board		
Director Sheila Hogan, Helena Qualifications (if required): DPHHS Director or designee	Governor	7/1/2020
Commissioner Michael McGinley, Dillon Qualifications (if required): Local Government Elected Official	Governor	7/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Workforce Innovation Board Cont.		
Mr. Grover Bennett Aldrich, Missoula Qualifications (if required): Business Representative	Governor	7/1/2020
Ms. Vicky Rae Byrd, Clancy Qualifications (if required): Workforce Representative	Governor	7/1/2020
Commissioner Galen Hollenbaugh, Helena Qualifications (if required): Commissioner of Labor and Industry or Designee	Governor	7/1/2020
Mr. Alan Ekblad, Helena Qualifications (if required): Workforce Representative	Governor	7/1/2020
Director Tara Rice, Helena Qualifications (if required): Ex-Officio Member	Governor	7/1/2020
Mrs. Jeaneen L. Campbell, Helena Qualifications (if required): Business Representative	Governor	7/1/2020
Mr. Ross R. Lane, Bozeman Qualifications (if required): Business Representative	Governor	7/1/2020
Mr. Loren Rose, Seeley Lake Qualifications (if required): Business Representative	Governor	7/1/2020
Commissioner Tom Lopach, Helena Qualifications (if required): Commissioner of Labor and Industry	Governor	7/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Workforce Innovation Board Cont. Commissioner Brenda Nordlund, Helena Qualifications (if required): Commissioner of Labor and Industry	Governor	7/1/2020
State-Tribal Economic Development Commission Councilman Lane Spotted Elk, Lame Deer Qualifications (if required): Northern Cheyenne Tribe Representative	Governor	7/1/2020
Ms. Shelly Fyant, Pablo Qualifications (if required): Confederated Salish and Kootenai Tribes' Representative	Governor	7/1/2020
Mr. Richard Sangray, Box Elder Qualifications (if required): Chippewa-Cree Tribe Representative	Governor	7/1/2020
Mr. Leonard Twoteeth, Pablo Qualifications (if required): Confederated Salish and Kootenai Tribes' Alternate Representative	Governor	7/1/2020
Teachers' Retirement Board Mr. Daniel Chamberlin, Helena Qualifications (if required): Representative of the public	Governor	7/1/2020
Tourism Advisory Council Dr. Kenneth Ryan, Poplar Qualifications (if required): Member from Indian tribal governments	Governor	7/1/2020

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Tourism Advisory Council Cont.		
Mr. Stephen Wahrlich, Billings Qualifications (if required): Southeast Montana Country Region Representative	Governor	7/1/2020
Ms. Jacquie Helt, Helena Qualifications (if required): Southwest Montana Region Representative	Governor	7/1/2020
Mr. Jeffery Ewelt, Billings Qualifications (if required): Southeast Montana Country Region Representative	Governor	7/1/2020
Ms. Glennis Indreland, Big Sky Qualifications (if required): Yellowstone Country Region Representative	Governor	7/1/2020
Ms. Sandra Johnson Thares, Great Falls Qualifications (if required): Central Montana Region Representative	Governor	7/1/2020
Ms. Cassandra Currio Luckey, East Helena Qualifications (if required): Southwest Montana Region Representative	Governor	7/1/2020
Underground Facility Protection Advisory Council		
Mr. Douglas Hardy, Great Falls Qualifications (if required): Member representing a rural electric cooperative operating in Montana	Governor	7/1/2020
Mr. Aaron Arthur, Miles City Qualifications (if required): Member rep telecommunications provider with fewer than 50,000 subscriber lines in MT	Governor	7/1/2020

EXECUTIVE BRANCH VACANCIES – JULY 1, 2020 THROUGH SEPTEMBER 30, 2020

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Underground Facility Protection Advisory Council Cont.		
Mr. Jason Moothart, Billings	Governor	7/1/2020
Qualifications (if required): Member rep telecommunications provider with more than 50,000 subscriber lines in MT		
Mr. Theron C. Pavlik, Bozeman	Governor	7/1/2020
Qualifications (if required): Member representing excavators		
Ms. Michelle Sylder, Laurel	Governor	7/1/2020
Qualifications (if required): Member rep owners or operators of a MT non-public underground facility		
Mr. Corey Sell, Billings	Governor	7/1/2020
Qualifications (if required): Member representing excavators		
Workers' Compensation Court Judge		
Mr. David M. Sandler, Kalispell	Governor	9/7/2020
Qualifications (if required): Judge		

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SECRETARY OF STATE

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