

# MONTANA ADMINISTRATIVE REGISTER

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# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 16

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-9009.

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.59.1757 pertaining to	)	AMENDMENT
designated manager supervisory	)	
requirements	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On October 10, 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 September 9, 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](mailto:banking@mt.gov).

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

2.59.1757 DESIGNATED MANAGER SUPERVISORY REQUIREMENTS

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

(2) The policy must include the frequency of:

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

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

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

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

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

(5) The designated manager must attest that he or she has read the policy. This attestation must be signed by the designated manager and included whenever the policy is submitted to the department. The designated manager and all

mortgage loan originators and employees of the mortgage broker or mortgage lender at each licensed location subject to the policy shall comply with the policy.

(6) A mortgage broker or lender may submit the information and the policy referenced in (1) through (5) in any format they choose or may use the Designated Manager Supervision Plan form dated July 8, 2020, available on the department's website at [www.banking.mt.gov](http://www.banking.mt.gov) to submit the information.

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

IMP: 32-9-122, ~~32-9-130~~, MCA

STATEMENT OF REASONABLE NECESSITY: The department has prepared a form that can be used to submit the information and policy set forth in subsections (1) through (5) above. This form is optional. It is designed to be a convenient method to submit the requirements of ARM 2.59.1757. However, mortgage brokers and lenders are not required to use the form and may submit the information and policy in whatever format they prefer.

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](mailto:banking@mt.gov); and must be received no later than 5:00 p.m., September 25, 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., September 9, 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 49 persons based on the 267 mortgage lender licensees and 221 mortgage broker licensees.

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](mailto: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 August 18, 2020.



BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.59.1738 pertaining to renewal	)	AMENDMENT
fees of mortgage brokers, mortgage	)	
lenders, mortgage servicers, and	)	NO PUBLIC HEARING
mortgage loan originators	)	CONTEMPLATED

TO: All Concerned Persons

1. On October 10, 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 September 9, 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](mailto:banking@mt.gov).

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

2.59.1738 RENEWAL FEES (1) Licenses issued under Title 32, chapter 9, part 1, MCA, expire December 31. Licensees shall submit their renewal applications by December 1 of each year to ensure issuance of the license to qualified renewal applicants by January 1 of the following year. The renewal fees for the license period January 1 through December 31, 2021, are:

- (a) Mortgage Broker Entity, ~~\$375.00~~, \$125.00 (except as provided in 32-9-117(1)(b), MCA);
- (b) Mortgage Broker Branch, ~~\$187.50~~ \$62.50;
- (c) Mortgage Lender Entity, ~~\$562.50~~ \$187.50;
- (d) Mortgage Lender Branch, ~~\$187.50~~ \$62.50;
- (e) Mortgage Loan Originator, ~~\$300.00~~ \$100.00;
- (f) Mortgage Servicer Entity, ~~\$562.50~~ \$187.50;
- (g) Mortgage Servicer Branch, ~~\$187.50~~ \$62.50.

AUTH: 32-9-117, 32-9-130, 32-9-134, MCA

IMP: 32-9-117, 32-9-130, 32-9-134, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to reduce renewal fees for all mortgage industry license types by two-thirds for the 2021 renewal period due to the COVID-19 pandemic and the economic upheaval it has spawned. The department realizes the mortgage industry has struggled with

unprecedented uncertainty and disruption in this difficult time. The industry has experienced an increased demand for mortgage services, while its originators are working from home and trying to meet borrowers' needs without face-to-face interactions. Borrowers who apply for loans sometimes have major life disruptions at the last minute in the process, causing loans to fall apart. New mortgage loan originators have experienced long wait times to schedule tests and fingerprinting due to stay-at-home orders and social distancing requirements. Servicers have had foreclosure moratoriums and have been asked to work with borrowers in extending loan modifications. The department recognizes the economic consequences of the COVID-19 pandemic have been both wide and deep. Given these circumstances, the department concluded it should reduce renewal fees by two-thirds for the 2021 renewal period which is paid in 2020. This amount was chosen to balance the need to offer short-term relief to those affected by the pandemic with the department's long-term need to generate sufficient revenue to cover the cost of carrying out its regulatory duties.

In Montana, there are currently licensed:

- 180 mortgage broker entities;
- 230 mortgage broker branches;
- 209 mortgage lender entities;
- 452 mortgage lender branches;
- 169 mortgage servicer entities;
- 109 mortgage servicer branches; and
- 3,280 mortgage loan originators.

The department expects that not all the current licensees will renew their licenses for 2021. However, based on prior years' renewals, the department predicts approximately 80 percent of its mortgage loan originators, 95 percent of mortgage companies, and 95 percent of mortgage company branch licensees will renew their licenses for 2021. Last year, the 2020 license renewal fees were reduced by 25 percent. If the department reduces renewal fees by two-thirds for 2021, this will reduce cumulative costs to licensees by approximately \$524,800. The department can adequately fulfill its mission with this reduction in fees.

The department is also correcting the authority citations.

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](mailto:banking@mt.gov); and must be received no later than 5:00 p.m., September 25, 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., September 9, 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 463 persons based on the 4,629 existing mortgage brokers, lenders, servicers, and loan originator licensees.

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](mailto: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 August 18, 2020.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE TO HOLD VIRTUAL
17.8.501, 17.8.504, 17.8.505, and )	PUBLIC HEARING ON
17.8.510 pertaining to air quality )	PROPOSED AMENDMENT
operation fees )	
)	(AIR QUALITY)

TO: All Concerned Persons

1. On September 25, 2020, at 10:00 a.m., the Board of Environmental Review (board) will hold a virtual public hearing via Zoom, to consider the proposed amendment of the above-stated rules.

Due to the guidance issued by the Governor of the State of Montana on March 26, 2020, regarding the COVID-19 public health situation, the public hearing will be held virtually via the Zoom meeting platform and will be recorded. Persons wishing to attend the public hearing need to register in advance with Zoom. Registration with Zoom may be made at the following link: <https://mt-gov.zoom.us/j/93922857437?pwd=R1FiWjN6d1htRnlxZ2NMVk9MRi9xdz09>. After registering, you will receive a confirmation email containing information about joining the hearing. Please contact Sandy Scherer at the Department of Environmental Quality at (406) 444-2630 or [sscherer@mt.gov](mailto:sscherer@mt.gov) should you encounter any difficulties.

2. The 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 Sandy Scherer no later than 5:00 p.m., September 18, 2020, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [sscherer@mt.gov](mailto:sscherer@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Under 75-2-220, MCA, the Department of Environmental Quality (department) assesses air quality permit application, registration, and annual air quality operation fees that are sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting and registration requirements for the Clean Air Act of Montana. Under ARM 17.8.510, the department is required to report to the board annually concerning the structure and amount of air quality fees. The amount of revenue the department needs to generate through the collection of air quality fees depends primarily on the amount of the legislative appropriation, projected expenditures, and projected revenue.

On April 12, 2019, the board adopted new rules to require the department's Air Quality Bureau to implement a registration program for sand and gravel, asphalt, and concrete facilities. Previously, the Clean Air Act of Montana required the owner or operator of a source of air pollution that met certain criteria to obtain a permit prior to construction or operation. Section 75-2-234, MCA, authorizes the board to adopt

a registration system in lieu of permitting, for certain classes of sources of air contaminants.

The last time the board raised air quality operation fees for sand and gravel, asphalt, and concrete facilities was in 2009. The annual operation fee for each permitted facility increased from \$600 to \$800.

As the Air Quality Bureau transitions from a permitting program to a registration program, a new fee structure is required. The annual operating permit fee was \$800 per year per source, and without these proposed rule amendments, there would be no operating fee for registered sand and gravel, asphalt, and concrete facilities. The statute, 75-2-220(1), MCA, requires programs to pay fees to cover the costs of implementation and enforcement, which will be considered under 75-2-111(5), MCA, when the rule is amended. The amended rule is designed to be revenue neutral, to generate about the same amount of funding from the new registration program as from the old permit program. The cost of administering the program is about \$275,000/year. The department will annually assess whether the fee rates are adequate to fund the work of the program and plans to request to return to the board when needed to adjust the fees to cover the costs of the program.

According to 2-4-302, MCA, the department is required to provide information about the number of persons affected by a fee change and the cumulative amount of the change. In 2018, the Air Quality Bureau collected \$276,000 in operating fees from approximately 140 companies operating 345 permitted sand and gravel, asphalt, and concrete facilities. These facilities were also required to pay an air quality permit application fee of \$500 when obtaining a new or modified permit, but that application fee would no longer apply to such facilities under the proposed rulemaking.

If the rules are amended, there would be a monetary effect on approximately 140 companies that are required to register. A registered facility is no longer required to pay the application fee to obtain a permit. With the amendment of ARM 17.8.504(5), application fees for registered facilities apply only to registered oil and gas well facilities. Based on production information received from companies in 2019, under the proposed fee structure, 115 entities will incur a reduction in fees and 37 will experience an increase. Under the proposed fee structure, the total collected in operating fees from registered sand and gravel, asphalt, and concrete facilities will be \$280,000. This amount is intended to replace the amount collected from both permit operation fees and application fees in previous years. Under the proposed amendments, sand and gravel, asphalt, and concrete facilities would no longer pay any application fee, only an annual operation fee.

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

17.8.501 DEFINITIONS (1) through (7) remain the same.

(8) "Registered sand and gravel, asphalt, and concrete facility" means any facility registered in accordance with ARM Title 17, chapter 8, subchapter 18.

AUTH: 75-2-111, MCA

IMP: 75-2-211, MCA

REASON: Section (8) is necessary to define "registered sand and gravel, asphalt, and concrete facility." That phrase is used in the proposed rules, and is not defined elsewhere in ARM Title 17, chapter 8, subchapter 5. It would add more specificity to the types of facilities that are required to register in the proposed rule amendments.

17.8.504 AIR QUALITY PERMIT APPLICATION FEES (1) through (4) remain the same.

(5) Concurrent with submittal of a registration form, as specified in ARM 17.8.1701 through 17.8.1705, the owner or operator of an oil and gas facility shall submit a registration fee of \$500.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA

IMP: 75-2-211, 75-2-220, 75-2-234, MCA

REASON: Section (5) provides that each registered oil and gas facility must pay a \$500 registration fee when it submits a registration form pursuant to ARM Title 17, chapter 8, subchapter 17. There is no application fee or registration fee for the registration of sand and gravel, asphalt, and concrete facilities under ARM Title 17, chapter 8, subchapter 18.

17.8.505 AIR QUALITY OPERATION FEES (1) An annual air quality operation fee must be submitted to the department by the owner or operator of each facility:

- (a) remains the same.
  - (b) for which an air quality operating permit has been issued by the department and remains in effect; ~~and~~
  - (c) that is a registered oil and gas facility; or with the department in accordance with ARM 17.8.1701 through 17.8.1705;
  - (d) that is a registered sand and gravel, asphalt, and concrete facility.
- (2) remains the same.
- (3) Air quality permit fee schedules ~~will~~ must require owners and operators of all facilities required to obtain a Montana air quality permit or an air quality operating permit to contribute to those department activities funded by air quality permit fees. The department shall attempt to identify all facilities subject to the annual air quality operating fee requirement and shall require payment from the owners or operators of all facilities.

(4) through (6) remain the same.

(7) Except as provided in (8), the air quality operation fee for:

(a) a facility facilities other than a portable facility facilities, registered sand and gravel, asphalt, and concrete facility, or registered oil and gas well facility facilities is:

- ~~(a)(i)~~ (i) an administrative fee of \$900; and
- ~~(b)(ii)~~ (ii) a tonnage fee of ~~an amount not to exceed~~ \$44.35 per ton of the actual, or the estimated actual, emissions by the facility during the previous calendar year of

PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds.

(8)(b) The air quality operation fee for a portable facility facilities subject to ARM Title 17, chapter 8, subchapter 7 is \$800-; and

(c) a registered sand and gravel, asphalt, and concrete facility is determined by multiplying total tons produced annually at:

(i) asphalt plants by \$0.05;

(ii) crushers/screeners by \$0.01; and

(iii) concrete batch plants by \$0.05.

(8) If the amount determined under (7)(c) is:

(a) less than \$500, the fee is \$500; or

(b) greater than \$13,000, the fee is \$13,000.

(9) through (13) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA

IMP: 75-2-211, 75-2-220, 75-2-234, MCA

REASON: The proposed amendments to (1)(c) and (1)(d) are necessary to establish an operation fee for two types of registered facilities: (1) oil and gas facilities and (2) sand and gravel, asphalt, and concrete facilities.

The proposed amendments to (7)(a) are necessary to add registered sand and gravel, asphalt, and concrete facilities to the types of registered facilities that are exempt from the \$900 administrative fee and the \$44.35 per ton fee, which apply to permitted, and not registered, facilities. An amendment is necessary to remove a phrase ("an amount not to exceed") that was inadvertently left in the rule the last time it was amended. The proposed amendment to (7)(b) is necessary to establish that portable facilities required to have a permit in ARM Title 17, chapter 8, subchapter 7, which are all portable facilities other sand and gravel, asphalt, and concrete facilities, must pay an operation fee of \$800.

Sections (7)(c) and (8) are necessary to determine the registration fee for registered sand and gravel, asphalt, and concrete facilities as defined in ARM Title 17, chapter 8, subchapter 18. The proposed rule in (8) will establish a minimum and maximum fee to be paid by sand and gravel, asphalt, and concrete facilities. This funding structure is not an effort to increase revenue beyond historic levels, but rather to collect sufficient funds to continue to operate an effective air quality program. The amount a registered facility will pay is commensurate with the extent of work required by the department to register and provide compliance assistance to the facility. The proposed fee structure in ARM 17.8.505 will result in a more equitable system for the fee payers; smaller, lower production facilities will pay less than larger, higher production facilities.

17.8.510 ANNUAL REVIEW (1) No later than September 30 of each year, the department shall report to the board regarding the air quality permit fees associated with air quality permits and facility registrations, which are anticipated for the next calendar year. This report shall include a description of the legislative appropriation to be recovered, the status of the specific appropriation account as of the end of the previous fiscal year, the emissions upon which such fees will be based, the fee structure to be implemented, and the status of any anticipated

rulemaking activity necessary to adopt the new fees.

AUTH: 75-2-111, MCA

IMP: 75-2-211, MCA

REASON: The proposed amendment to (1) would add fees for registered facilities to the items about which the department is required to report to the board annually. The rule requires the department report on air quality permit fees only. Under 75-2-111, MCA, the board is authorized to adopt a schedule of fees for permits, permit applications, and registrations. The annual report to the board required in ARM 17.8.510 ensures the department is satisfying the requirement to make the board aware of anticipated air quality permit and registration fee changes in the next calendar year.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [sscherer@mt.gov](mailto:sscherer@mt.gov), no later than 5:00 p.m., September 25, 2020. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

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



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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Angela Colamaria  
ANGELA COLAMARIA  
Rule Reviewer

BY: /s/ Christine Deveny  
CHRISTINE DEVENY  
Chair

Certified to the Secretary of State, August 18, 2020.

BEFORE THE BOARD OF PARDONS AND PAROLE  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I pertaining to parole guidelines	)	PROPOSED ADOPTION AND
and the amendment of ARM	)	AMENDMENT
20.25.704 pertaining to conditional	)	
discharge from supervision	)	

TO: All Concerned Persons

1. On September 21, 2020, at 11:00 a.m., the Board of Pardons and Parole (board) will hold a public hearing via Zoom Webinar to consider the proposed adoption and amendment of the above-stated rules. Due to Covid-19 health safety considerations, holding an in-person public hearing is not currently a viable option. Participants may access the Zoom Webinar hearing at [https://mt-gov.zoom.us/webinar/register/WN\\_CVo9BOPuRcCle-psFlaJ\\_A](https://mt-gov.zoom.us/webinar/register/WN_CVo9BOPuRcCle-psFlaJ_A). Participants will be able to listen to the hearing but will not be able to orally present data, views, or arguments during the Zoom Webinar hearing. Participants wishing to submit data, views, or arguments will need to do so in writing and by the deadline set out in paragraph 7 of this notice.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Corrections no later than 5:00 p.m. on September 17, 2020, to advise us of the nature of the accommodation that you need. Please contact Griffin Burns, Department of Corrections, P. O. Box 201301, Helena, Montana 59620-1301; telephone (406) 444-1551; fax (406) 444-3920; TDD/Montana Relay Service (406) 444-4290; or e-mail [GBurns@mt.gov](mailto:GBurns@mt.gov).

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

NEW RULE I PAROLE GUIDELINES (1) The purpose of the parole guidelines is to structure and guide parole release decisions and decisions relating to imposition of release conditions. Guidelines are a tool that ensure that members of the Board of Pardons and Parole (board) consider the identified factors when reviewing individual cases. Guidelines are not, in themselves, dispositive of the board's decisions. They provide a framework to facilitate reasonable consistency in paroling decisions.

(2) The board will consider in its guidelines the following factors in decreasing order of importance:

(a) The resulting score contained in a validated risk and needs assessment instrument administered to the offender by trained and certified corrections personnel and provided to the board for parole purposes. The resulting score on the risk and needs assessment is based on a point-range of 0 to 6 with 0 being low risk and 6 being very high or high risk, depending on the assessment instrument used.

General validated risk and needs assessment instruments reviewed by the board are the Montana Offender Reentry and Risk Assessment (MORRA) for a male offender and the Women's Risk/Needs Assessment (WRNA) for a female offender. Sub-population or specialized assessments are reviewed if they are made available to the board. Sex-offender assessments are administered by a sex offender treatment therapist meeting the qualification standards set in ARM Title 20, chapter 7, subchapter 3. If both a general assessment instrument and a sub-population specific instrument are administered to an offender, the higher of the two scores will take precedence.

(b) Risk reduction program and treatment completion, scored as follows:

- (i) 0 points for completion of all required programming, no programs recommended, or sentence did not allow sufficient time for completion;
- (ii) 1 point for current enrollment in risk reduction programming;
- (iii) 2 points for being on the waitlist for risk reduction programming; or
- (iv) 5 points for refusal to participate in or having been terminated from risk reduction programming.

(c) Institutional behavior, scored as follows:

- (i) 0 points for having no infractions in the past 6 months;
- (ii) 2 points for having major infractions but no highest severity infractions within the past 6 months; or
- (iii) 3 points for having any highest severity major infraction in the past 6 months.

(d) Severity of the offense currently being served by a parole-eligible offender under 46-23-201, MCA, scored as follows:

- (i) 0 points for non-violent; or
- (ii) 2 points for a violent offense or a sex offense as those terms are defined in 46-18-104, MCA.

(3) Generally, an aggregate score of 0 to 8 points under (2)(a) through (2)(d) weighs in favor of the offender and an aggregate score of 9 or more points under (2)(a) through (2)(d) weighs against the offender. The board is not bound to grant or deny parole based solely on the aggregate score.

(4) For purposes of applying the parole guidelines set out in (1)(c), the Board adopts the list of institutional infractions and the characterizations of their severity currently used in "state prisons" as that term is defined in 53-30-101, MCA. The current list will be maintained by the board on its website <https://bopp.mt.gov/> at all times.

(5) Board decisions concerning imposition of parole release conditions are based in part upon the domains evaluated by the risk and needs instruments. These include, but are not limited to: Education, Employment and Social Support; Substance Abuse and Mental Health; Criminal Attitudes and Behavioral Patterns and upon indicated treatment recommendations contained therein.

(6) The board may develop one or more forms to use in applying the guidelines.

AUTH: 46-23-218, MCA

IMP: 46-23-208, 46-23-218, MCA

REASON: The legislature mandated that the Board of Pardons and Parole (board) adopt administrative rules establishing parole guidelines to structure and guide parole release decisions and imposition of release conditions. (46-23-218(3), MCA). This rule implements the statutory mandate by establishing a point system and scoring model to ensure that the guidance can be applied objectively and consistently.

The board, in consultation with the Department of Corrections, is mandated to consider an offender's institutional behavior as reflected by disciplinary records, in developing parole guidelines. (46-23-218, MCA). Section (4) of the proposed new rule states how institutional behavior is factored into the parole guidelines' point system and scoring model.

In developing the guidelines within the parameters established by the legislature, a working group of the board consulted and worked in conjunction with the Council on State Governments and the National Parole Resource Center. Factors deemed essential to accomplish the mission of the board when reviewing individual cases were identified as were the tools needed to guide the decision-making process. For many years, parole boards across the nation have worked to identify and agree on decision-making tools for use in their decision-making process. The most commonly used tool is the risk and needs assessment instrument. The validated instruments assess both static and dynamic risk and identify the criminogenic needs that are driving the risk to reoffend. The board uses the Supplemental Reentry Tool (MORRA), the Reentry Tool (MORRA), the Institutional Assessment (WRNA) and the applicable sex offender assessment (STATIC 2002R) instruments. The existence of a parole guideline framework helps the Board to exercise due diligence in reviewing relevant information in all cases. The development of guidelines can be an important tool in assuring continuity and reasonable consistency to minimize variances that can accompany the turnover in board membership.

Validation of the guidelines is a lengthy process because it involves examination and statistical analysis of data collected after the parole guidelines have been in use for some time. The statutory parameters for the guidelines and the framework for the point system and scoring model have been in use by the board since August 2017. Statistical data has been collected since April 2018 as required by 46-23-218, MCA. The MORRA and WRNA instruments, developed by the University of Cincinnati, are validated instruments.

The validated risk and needs assessment instrument used for sex offenders differs from the validated MORRA and WRNA general risk and needs assessment instruments. The rule clarifies how the sex offender-specific risk and needs assessment bears on the guidelines' scoring model if a sex offender-specific assessment instrument is used in conjunction with a general/standard MORRA or WRNA assessment instrument.

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

20.25.704 CONDITIONAL DISCHARGE FROM SUPERVISION (1) through (3) remain the same.

(4) When a hearing panel considers granting a conditional discharge from supervision, it will consider the ~~achievement credits the parolee has accrued pursuant to 46-23-1027, MCA.~~ following criteria:

(a) supervision compliance:

(i) no positive drug or alcohol tests or any drug or alcohol use admissions in the last six months;

(ii) free of non-compliance violations during the required supervision time; and

(iii) has been accountable for working on and meeting goals established in case plan or through supervision with parole officer;

(b) residential stability:

(i) has a permanent residence and is self-sufficient regarding housing costs with or without public assistance and is not homeless or at risk of homelessness;

(c) employment stability:

(i) currently employed and has been employed for majority of time while under parole supervision; or

(ii) has demonstrated the ability to be financially self-sufficient; and

(iii) has fulfilled court-ordered restitution obligation;

(d) engagement in treatment:

(i) successful completion of all board-ordered and court-ordered treatment and programming;

(e) other factors indicative of adequate reentry stability; and

(f) the achievement credits the parolee has accrued pursuant to 46-23-1027, MCA.

(5) If a hearing panel grants a conditional discharge from supervision it may order the parolee to submit written reports to the board ~~once a year~~ in January of each year, reporting the parolee's address, and any contacts the parolee has had with law enforcement.

(6) A hearing panel may revoke a conditional discharge from supervision and return a parolee to active supervision or amend the conditions of the conditional discharge from supervision if, in the opinion of a hearing panel, this action is in the best interest of society ~~and the parolee has committed any of the violations listed in (7).~~

~~(7) The board may revoke a parole even when the parolee is conditionally discharged from supervision, if the parolee:~~

~~(a) is charged with a felony offense;~~

~~(b) is charged with a misdemeanor offense for which the parolee could be sentenced to incarceration for a period of more than six months; or~~

~~(c) the parolee fails to report his/her address and law enforcement contacts.~~

AUTH: 46-23-218, MCA

IMP: 46-23-215, 46-23-1020, 46-23-1021, MCA

REASON: The rule amendments are needed to assure conformity of the rule with the statutes being implemented and for clarity purposes. In (4), the board provided guidance as to what constitutes "supervision compliance," "residential

stability," "employment stability," and "engagement in treatment" to facilitate consistent application of the criteria to parolees by the hearing panels.

5. Concerned persons may submit written data, views, or arguments to: Griffin Burns, Department of Corrections, 5 S. Last Chance Gulch, P.O. Box 201301, Helena, Montana 59620-1301; telephone (406) 444-1551; fax (406) 444-4920; or e-mail GBurns@mt.gov, and must be received no later than 5:00 p.m., September 29, 2020.

6. Lorraine Schneider, Department of Corrections, 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. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by hand-delivered letter and email on June 7, 2019.

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

/s/ Colleen E. Ambrose

Colleen E. Ambrose  
Rule Reviewer

/s/ Annette Carter

Annette Carter  
Chair  
Board of Pardons and Parole

Certified to the Secretary of State August 18, 2020.

BEFORE THE BOARD OF MEDICAL EXAMINERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING ON
24.156.1601 definitions, 24.156.1604	)	PROPOSED AMENDMENT AND
training of student physician assistants,	)	REPEAL
24.156.1617 application for physician	)	
assistant license, 24.156.1618	)	
physician assistant fees, 24.156.1621	)	
reporting to the board, 24.156.1622	)	
supervision of physician assistant,	)	
24.156.1624 patient rights, 24.156.1625	)	
unprofessional conduct, 24.156.1626	)	
management of infectious wastes, and	)	
the repeal of 24.156.1620 physician	)	
assistant license renewal	)	

TO: All Concerned Persons

1. On September 22, 2020, at 11:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal 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, <https://mt-gov.zoom.us/j/96251780405?pwd=aHVscmVWR1FEbHpYaTJYcEhsZzgvZz09>  
Meeting ID: 962 5178 0405  
Password: 998035

OR

(b) Dial by telephone, +1 (406) 444-9999 or +1 (646) 558 8656  
Meeting ID: 962 5178 0405  
Password: 998035

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on September 15, 2020, to advise us of the nature of the accommodation that you

need. Please contact Samuel Hunthausen, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or [dlibsmed@mt.gov](mailto:dlibsmed@mt.gov) (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board is proposing to amend and repeal several rules to clarify and simplify language, reduce ambiguity, eliminate duplication of rule and statute, replace out-of-date processes with modern technology, and align with and facilitate standardized department procedures. Additional amendments substitute modern language for archaic phrasing, update grammar, punctuation, numbering, and language choices, and eliminate repetitive language.

The board periodically reviews its administrative rules by license type for the purposes of focusing discussion and comment and recently reviewed the physician assistant (PA) rules in subchapter 16 as part of the proposed reform of the supervision agreement application process and the board member interview requirement.

Following recommendations from department staff and board members involved in the interviews, the board determined it is reasonably necessary to reform the board member interview process that is required of physicians and physician assistants applying for supervision agreement approval. Currently an applicant for a supervision agreement who has not been in a supervision relationship must submit an application, wait for the application to be processed, then arrange an interview with a board member, and then wait for the department to process the board member's report from the interview. The board has determined that these interviews are primarily educational and informational, and their purpose can be served through an online, automated presentation and test. The board intends for the online module to be available to applicants at all hours, thus reducing processing and wait times, ensuring consistent delivery of information, and reducing board member workload. The interview workload is substantial for board members, and since one member involved in the interview process will conclude his board term on September 1, 2020, the board concluded that this is an appropriate time to transition to a new process. Therefore, the board is amending several rules in this notice to replace the board member interview with online educational modules, testing, and issuance of a certificate of completion.

Authority and implementation citations are being amended throughout to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority. Where additional specific reasons for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.156.1601 DEFINITIONS As used in this subchapter the following definitions apply:

(1) "Board" means the Board of Medical Examiners.



(1) ~~(2)~~ "Direct supervision" means the supervisor is ~~within technologically unassisted audible and visible reach of~~ physically present with the person being supervised.

~~(2)~~ ~~(3)~~ "General supervision" means accepting responsibility for, and overseeing the medical services of, a physician assistant by telephone (voice or text), radio, video, or in person as frequently as necessary considering the location, nature of practice, and experience of the physician assistant.

~~(3) "Nonroutine application" means an initial physician assistant license application and/or supervision agreement where the supervising physician has never supervised a Montana licensed physician assistant and/or the physician assistant has never practiced in the state of Montana. A nonroutine application shall require a teleconference interview with a current board member.~~

~~(4) remains the same.~~

~~(5) "Routine application" means a supervision agreement where the supervising physician and the physician assistant both have had approved Montana supervision agreements or utilization plans in the past. These applications shall be processed and approved by board staff.~~

AUTH: ~~37-1-131~~, 37-20-202, MCA

IMP: ~~37-1-101~~, 37-20-101, ~~37-20-202~~, 37-20-301, 37-20-403, MCA

REASON: The board is defining "board" at (1) for consistency among board rules.

Following a rules committee discussion, the board is amending the definition of "direct supervision" in (2) to clarify the board's intent that supervisors be physically present with supervisees. The board does not intend to exclude a supervisor's use of hearing aids, glasses, etc. while supervising.

The board is striking the definitions of "nonroutine application" and "routine application" to defer to the division's definitions in ARM 24.101.402 and further facilitate the department's standardized application procedures.

To align with the replacement of the interview process with an online process, the board is moving relevant provisions to ARM 24.156.1617 and 24.156.1622.

24.156.1604 TRAINING OF STUDENT PHYSICIAN ASSISTANTS (1) and (2) remain the same.

(3) A physician assistant student training in Montana must:

(a) be currently enrolled in a physician assistant training program accredited by the Accreditation Review Commission on Education for the Physician Assistant or, if accreditation was granted before 2001, accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs; and

(b) remains the same.

AUTH: 37-20-202, MCA

IMP: ~~37-20-202~~, 37-20-303, 37-20-402, MCA

24.156.1617 APPLICATION FOR PHYSICIAN ASSISTANT LICENSE

(1) An applicant for a physician assistant license shall submit an application ~~on a form prescribed by the department. The application must be complete and accompanied by, the appropriate fees, and the following information and/or documentation:~~

- (a) remains the same.
- (b) verification of education as required by 37-20-402, MCA; and
- (c) verification of passage of an exam as required by 37-20-402, MCA; and
- (d) certificate of completion of the board-approved online training for physician assistants and supervising physicians.

(2) The board or its designee will obtain a query from the National Practitioner Data Bank for each applicant.

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

~~(3) Applicants whose applications are received, processed, and determined to be incomplete will be sent a letter from the board office specifying the deficiencies, which may include but not be limited to appropriate fees, verifications, character references, and any other supplemental information the board or its designee deems appropriate. The incomplete application will be held for a period of one year at which time the application will be treated as an expired application and all fees will be forfeited. The applicant may correct any deficiencies, submit missing or additional information, and complete any requirements necessary to complete the application within one year from the date the initial application is received in the board office.~~

(4) The applicant may voluntarily withdraw the application ~~prior to the one-year deadline set forth in (3) by submitting a request to withdrawal in writing to the board, if the application has not appeared on a board agenda, by submitting a~~ written request to the board office. All application fees submitted will be forfeited.

~~(5) After withdrawal of an application, the applicant will be required to submit a new application, including supporting documentation and appropriate fees to begin the licensing and verification process again.~~

~~(6) Completed applications shall be reviewed by the board or its designee, which may request such additional information or clarification of information provided in the application as deemed reasonably necessary.~~

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-1-131, 37-20-203, 37-20-302, 37-20-402, MCA

REASON: To align with the new online education module and test, the board is adding (1)(d) to require proof of completion of that education. The board is adding (2) to clarify the requirement and process for the NPDB query. When the process shifted from an applicant request to the department obtaining the query, the board amended the rules for other board license types but had not yet done so for PAs.

The board is removing application processes from this rule as they are uniformly applied across all licensing boards and set forth in standardized department procedures.

24.156.1618 PHYSICIAN ASSISTANT FEES (1) remains the same.

(2) Licensees desiring to activate an inactive physician assistant license must contact the board department and pay an activation fee of \$150 and ~~affirm that they have a current NCCPA certification.~~

(3) remains the same.

AUTH: 37-1-134, 37-20-202, MCA

IMP: 37-1-134, 37-1-141, 37-20-302, MCA

REASON: The board previously eliminated the requirement for NCCPA certification for PA licensure in both statute and rule. This reference was inadvertently missed in prior rulemaking projects and the board is striking it for consistency.

24.156.1621 OBLIGATION TO REPORT REPORTING TO THE BOARD

(1) A physician assistant shall report to the board within ~~three months from~~ 30 days of the date of a the final judgment, order, or agency action, ~~all information related to any malpractice, professional misconduct, criminal, or disciplinary action in which the physician assistant or the physician assistant's supervisor, based on the physician assistant's conduct, is a named party, or any loss of privileges.~~

(2) A physician assistant shall, within ten days of receipt of a complaint from the board, provide the board department with the name of the supervising physician who is responsible under the supervision agreement to which the complaint is related.

(3) A physician assistant with ~~suspected or~~ known impairment shall self-report to the board. In lieu of reporting to the board, the physician assistant may self-report to the board-endorsed professional assistance program.

(4) A physician assistant may report suspected or known impairment of other health care providers to the appropriate licensing board, or agency, ~~or~~ in lieu of the board or agency, may report to the board-endorsed professional assistance program.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-401, MCA

REASON: The board is changing the reporting deadline from three months to thirty days to align with standardized department procedures that apply to all boards.

The board is amending (1) to add a PA's loss of privileges as actions reportable to the board. Department counsel suggested the board amend this rule and ARM 24.156.1625 (PA unprofessional conduct) to enable and assist the prosecution of such non-reporting.

The board determined it is reasonably necessary to amend (3) to not require reporting of one's own "suspected" impairment. During the rule review, board counsel noted individuals generally either acknowledge or deny such impairment and the provision made no sense. Further, non-reporting of personally suspected impairment would be extremely difficult if not impossible to enforce.

24.156.1622 SUPERVISION OF PHYSICIAN ASSISTANT (1) remains the same.

~~(2) The supervising physician shall consider the location, nature, and setting of the practice and the experience of the physician assistant when entering into a new supervision agreement and a duties and delegation agreement to assure the safety and quality of physician assistant services.~~

(2) A physician who has never previously acted as a supervising physician in Montana, as defined by 37-20-401, MCA, must complete the board-approved online training for physician assistant supervision and a certificate of completion must be submitted to the board office with the signed supervision agreement prior to the supervision agreement taking effect.

~~(3) The supervising physician shall meet face-to-face~~ communicate with each supervised physician assistant ~~supervised~~ a minimum of once a month for the purposes of discussion, education, and training, to include but not be limited to practice issues and patient care.

(4) A supervising physician may supervise more than one physician assistant if the supervising physician:

(a) and (b) remain the same.

(c) determines the appropriate level of supervision identified in (1) ~~(direct, on-site, or general)~~, based on the physician assistant's education, training, and experience; and

(d) remains the same.

~~(5) The supervision agreement and duties and delegation agreement for nonroutine applicants~~ must assure the safety and quality of physician assistant services, considering the location, nature, and setting of the practice and the experience of the physician assistant, and shall provide for:

(a) and (b) remain the same.

(c) appropriate frequency and duration of ~~face-to-face~~ meetings.

~~(6) The supervision agreement and duties and delegation agreement for nonroutine applicants~~ may provide for periodic changes in the type of supervision, scope of delegation, practice limitations, frequency, and duration of face-to-face meetings, and percentage of charts reviewed, based upon the duration and nature of experience gained by the physician assistant, the supervising physician's written assessment and evaluation of the physician assistant's experience and judgment, and other factors relevant to the nature and degree of supervision appropriate to assure the safety and quality of physician assistant services.

(7) The duties and delegation agreement must be available at the practice site at all times and must be submitted, if requested, to the board or its designee upon request during the interview required pursuant to ARM 24.156.1601(3).

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-1-131, 37-20-101, 37-20-301, 37-20-403, MCA

REASON: See GENERAL STATEMENT OF REASONABLE NECESSITY.

The board is striking "face-to-face" from (3) and (5)(c) as it is an undefined term and department staff receives many questions from licensees as to whether videoconferencing satisfies the requirement, particularly as COVID-19 protocols discourage face-to-face meetings. The board concluded that meetings may be

conducted by other means, including by phone or e-mail, when necessary and appropriate.

The board is amending (6) to align with the removal of the "nonroutine application" definition from ARM 24.156.1601(3). Additionally, the board concluded that the provisions of (6) should apply to all PA applicants and not just to nonroutine applicants.

24.156.1624 PATIENT RIGHTS (1) For the purposes of implementing this chapter, if the patient is being medically cared for or treated by a physician assistant:

(a) The patient may request to be treated or seen by the supervising physician in lieu of the physician assistant, if the supervising physician is available;

(b) If the supervising physician is not available, the patient must be given an explanation for the unavailability of the supervising physician and the patient's request and explanation must be documented in the patient's chart at the time of the request. The patient must also be given the opportunity to be treated by the supervising physician when the supervising physician is available; and

(c) remains the same.

AUTH: 37-20-202, MCA

IMP: 37-20-101, 37-20-301, MCA

24.156.1625 UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is are considered unprofessional conduct for a physician assistant licensee or license applicant under Title 37, chapter 20, MCA:

~~(a) conviction, including conviction following a plea of nolo contendere of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending;~~

~~(b) (a) conduct likely to deceive, defraud, or harm the public, including, but not limited to, practicing while subject to a physical or mental condition which renders the licensee unable to safely engage in the practice of medicine;~~

~~(c) making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;~~

~~(d) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person; or in billing, giving, or receiving a fee related to professional services; or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, MCA;~~

~~(e) (b) violation of any section in Title 37, chapter 20, MCA, and/or any statute or rule adopted by the board to implement Title 37, chapters 1 or 20, MCA, under the board's jurisdiction any order of the board regarding enforcement of discipline of a licensee, or any term, condition, or limitation imposed on the licensee in a utilization plan;~~

~~(f) habitual intemperance or excessive use of an addictive drug, alcohol, or any other substance to the extent that the use impairs the user physically or~~

mentally; this provision does not apply to a licensee who is maintaining an approved therapeutic regimen as described in 37-3-203, MCA;

~~(g) (c) failing to furnish to the board or its investigators or representatives information legally requested by the board~~ cooperate with an investigation or request for information by the board or its designee;

~~(h) failing to cooperate with a lawful investigation conducted by the board;~~

~~(i) (d) failing to report to the board~~ office within 30 days of the date of a final any adverse judgment, order, or agency action, any malpractice, professional misconduct, criminal or disciplinary action in which the physician assistant or the physician assistant's employer, on account of the physician assistant's conduct, is a named party, or any loss of privileges settlement, or award arising from a medical liability claim or other unprofessional conduct;

~~(j) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;~~

~~(k) (e) commission of an act of sexual abuse, misconduct, or exploitation by the licensee, whether or not related to~~ occurring in the licensee's practice of medicine;

~~(l) administering, dispensing, prescribing, or ordering a controlled substance, as defined by the federal Food and Drug Administration or successors, other than in the course of legitimate or reputable professional practice;~~

~~(m) conviction or violation of a federal or state law regulating the possession, distribution, or use of a controlled substance, as defined by the federal Food and Drug Administration or successors, whether or not an appeal is pending;~~

~~(n) remains the same but is renumbered (f).~~

~~(o) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;~~

~~(p) through (r) remain the same but are renumbered (g) through (i).~~

~~(s) (j) willfully harassing, abusing, or intimidating a patient, either physically or verbally;~~

~~(t) and (u) remain the same but are renumbered (k) and (l).~~

~~(v) (m) acting in such a manner as to present conduct that presents a danger to public health or safety, or to any patient including, but not limited to, incompetence, negligence, or malpractice;~~

~~(w) (n) having voluntarily relinquished or surrendered a professional or occupational license, certificate, or registration in this state, or in another state or jurisdiction~~ while under investigation or during a pending complaint;

~~(x) remains the same but is renumbered (o).~~

~~(y) failing to furnish to the board or its designee information requested by the board;~~

~~(z) (p) filing a complaint with, or providing information to, the board, which the licensee knows, or ought to should know, is false or misleading. This provision does not apply to any filing of a complaint or providing information to the board when done in good faith under 37-1-308, MCA;~~

~~(aa) (q) falsifying and altering patient records, intentionally documenting patient records inaccurately, or failing to appropriately and timely document patient records;~~

~~(ab) (r) diversion of a medication for any purpose or a violation of state or federal laws governing the administration of medications;~~

~~(s) violating state or federal laws relative to drugs;~~

~~(ae) (t) failing to comply with any agreement with the board, required by the board, or with the endorsed professional assistance program contracted by the board, the licensee has entered into with a program established by the board under 37-3-203, MCA;~~

~~(ad) (u) failing to submit to the board a completed supervision agreement prior to commencing physician assistant practice in Montana; and~~

~~(ae) failing to maintain and/or provide copies on request, pursuant 37-1-301, MCA, of the physician assistant's current duties and delegation agreement; and~~

~~(af) any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.~~

(v) violating state or federal laws while performing or attempting to perform the practice of medicine.

AUTH: 37-1-319, 37-20-202, MCA

IMP: 37-1-316, 37-1-319, 37-3-202, 37-20-403, MCA

REASON: Following an in-depth review, the board determined it is reasonably necessary to update this rule to remove duplication with statute, streamline the rule for ease of use, and more clearly set forth the actions considered by the board as unprofessional conduct. The board further determined that this rule requires several revisions to make it more effective for prosecuting alleged unprofessional conduct. The board is removing duplicative language and combining several provisions throughout for simplicity, better organization, and improved readability. The board is also adding clarifying language to several provisions to address licensee questions and assist in the prosecution of certain unprofessional conduct.

Legal counsel recommended striking (1)(a) through (d), (f), (j), (m), and (o) to avoid unnecessary duplication with the unprofessional conduct statute 37-1-316, MCA.

In response to department counsel's request and to align with amendments to ARM 24.156.1621, the board is amending (d) to add the failure to report loss of privileges as unprofessional conduct and facilitate the prosecution of such non-reporting.

The board is striking (h) and (y) as the conduct is adequately addressed in new (c). The board is eliminating (l) and incorporating its purpose into (s).

The board is amending (n) upon request of department counsel and for consistency with changes made to the ECP rules in 2019.

The board is striking (ae) because it is already stated in statute at 37-20-301(3), MCA.

Department counsel requested the board remove (af) because the provision is too vague to be utilized as a basis for licensure discipline or sanction.

Following a suggestion from department counsel, the board is adding (v) to allow prosecution of complaints arising from the violation of state or federal laws that may not be specifically enumerated within this rule.

24.156.1626 MANAGEMENT OF INFECTIOUS WASTES (1) Each physician assistant ~~certified~~ licensed by the board shall store, transport off the premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(2) remains the same.

AUTH: 37-1-131, ~~37-20-202~~, 75-10-1006, MCA

IMP: 37-1-131, 75-10-1006, MCA

REASON: In 2006, the board amended the PA rules to implement House Bill 737 (2005) which eliminated the use of "certified" for physician assistants. The board inadvertently missed this reference and is amending for consistency now.

5. The rule proposed to be repealed is as follows:

24.156.1620 PHYSICIAN ASSISTANT LICENSE RENEWAL

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-1-141, 37-20-203, 37-20-302, 37-20-402, MCA

REASON: The board determined it is reasonably necessary to repeal this rule as unnecessarily redundant, since the renewal process is adequately addressed by ARM 24.101.408 and standardized department procedures.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsmed@mt.gov](mailto:dlibsmed@mt.gov), and must be received no later than 5:00 p.m., September 25, 2020.

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

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



mailed to [dlibsdmed@mt.gov](mailto:dlibsdmed@mt.gov); or made by completing a request form at any rules hearing held by the agency.

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

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.156.1601, 24.156.1604, 24.156.1617, 24.156.1618, 24.156.1621, 24.156.1622, 24.156.1624, 24.156.1625, and 24.156.1626 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.156.1620 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; facsimile (406) 841-2305; or to [dlibsdmed@mt.gov](mailto:dlibsdmed@mt.gov).

11. Samuel Hunthausen, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS  
ANA DIAZ, Ph.D.  
PRESIDENT

/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 August 18, 2020.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	AMENDED NOTICE OF PUBLIC
ARM 24.301.1003 assessment and	)	HEARING AND EXTENSION OF
collection of civil penalties,	)	COMMENT PERIOD ON PROPOSED
24.301.1007 collection of annual fees,	)	AMENDMENT
24.301.1009 disputes regarding	)	
penalties and fines – mediation, and	)	
24.301.1011 training and educational	)	
grants, all pertaining to the	)	
Underground Facility Protection	)	
Program	)	

TO: All Concerned Persons

1. On August 7, 2020, the Department of Labor and Industry (department) published MAR Notice No. 24-301-348 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1463 of the 2020 Montana Administrative Register, Issue No. 15. A public hearing was scheduled in the notice to be held on September 1, 2020.

2. The department is canceling the original September 1, 2020, public hearing and is rescheduling the public hearing as shown below. The rules proposed to be amended remain as proposed in the original notice.

3. On September 18, 2020, at 1:00 p.m., a public hearing will be held via remote conferencing to consider the proposed amendment 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, <https://mt-gov.zoom.us/j/92281898325>  
Meeting ID: 922 8189 8325

OR

(b) Dial by telephone, +1 406 444 9999 or +1 646 558 8656,  
Meeting ID: 922 8189 8325

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

4. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative

accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 11, 2020, to advise us of the nature of the accommodation that you need. Please contact Traci Collett, Underground Facility Protection Program, 301 South Park Avenue, P.O. Box 200517, Helena, Montana 59620-0517; telephone (406) 841-2016; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; or [buildingcodes@mt.gov](mailto:buildingcodes@mt.gov).

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Underground Facility Protection Program, 301 South Park Avenue, P.O. Box 200517, Helena, Montana 59620-0517, by facsimile to (406) 841-2050, or e-mail to [buildingcodes@mt.gov](mailto:buildingcodes@mt.gov), and must be received no later than 5:00 p.m., September 25, 2020.

/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 August 18, 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 IV and the	)	PROPOSED ADOPTION AND
amendment of ARM 37.5.118,	)	AMENDMENT
37.5.304, 37.5.307, 37.47.602,	)	
37.47.610, 37.47.613, 37.47.614, and	)	
37.51.216 pertaining to substantiation	)	
of abuse and neglect reports and	)	
disclosure of information	)	

TO: All Concerned Persons

1. On September 17, 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/95574421357>; meeting ID: 955 7442 1357; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 955 7442 1357. Find your local number: <https://mt-gov.zoom.us/u/ad6NjwGku4>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 11, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

NEW RULE I DECLARATION OF PURPOSE: CHILD ABUSE AND NEGLECT INVESTIGATIONS DETERMINED AS "SUBSTANTIATED" (1) Section 41-3-205, MCA provides that the case records of investigations into child abuse and neglect are confidential.

(2) Section 41-3-205, MCA also provides that persons and entities carrying out background, employment-related, or volunteer-related activities on prospective employees or volunteers who may have unsupervised contact with children may request information from the department. The information that may be provided by the department to such a request is limited to confirmation that the department's

Protective Services Information System has information that indicates the person may pose a risk to children.

(3) The purpose of [New Rule I], [New Rule II], [New Rule III], and [New Rule IV] is to provide a process for which information in a child abuse or neglect investigation may be relied upon by the department in determining that a person may pose a risk to children and can be reported pursuant to 41-3-205, MCA.

(4) It is the policy of the department that any report of child abuse or neglect that is determined as "substantiated" may be disclosed to entities conducting background checks on persons who may have unsupervised access to children.

(5) Substantiated reports may also be used to deny a person a foster care license or employment in any field where a person has or may have unsupervised contact with children.

(6) Nothing in this rule prohibits the department or its personnel from using the facts discovered during an investigation and the associated case record of a child abuse or neglect report investigation, as necessary, to support district court actions under Title 41 of the Montana Code Annotated or an administrative process of the department.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 41-3-102, 41-3-202, 41-3-205, MCA

NEW RULE II WHEN THE RESULTS OF AN INVESTIGATION OF AN INDIVIDUAL OF REPORTED CHILD ABUSE AND NEGLECT MAY BE DISCLOSED AS POSING A RISK TO CHILDREN

(1) After any investigation of a reported child abuse or neglect has been completed and the safety assessment set forth in 41-3-202, MCA is completed, the investigating worker and the local supervisor must determine how to list the report and investigation in the Protective Information System provided by ARM 37.47.613.

(2) The results of the investigation must be listed as either unsubstantiated, founded, or substantiated.

(3) In order for an investigation to be listed as substantiated against the subject of the report, the investigating worker and the supervisor must determine that the preponderance of the evidence supports a finding that:

- (a) the reported abuse or neglect occurred;
- (b) the subject was the perpetrator of the abuse or neglect; and
- (c) the case file documents sufficient evidence under the totality of the circumstances to find that the subject may pose a risk to children.

(4) The factors considered in determining whether a subject in a child abuse or neglect report may pose a danger to children include but are not limited to:

- (a) the nature of the substantiated abuse or neglect;
  - (b) any prior or subsequent child abuse or neglect reports or investigations involving the perpetrator;
  - (c) any prior or subsequent Youth in Need of Care adjudications in District Court where the perpetrator was determined as an abuser;
  - (d) any prior or subsequent criminal convictions for crimes against children;
- and

(e) the degree to which a child was impacted by any prior or subsequent reported abuse or neglect, or any prior or subsequent criminal convictions.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 41-3-102, 41-3-202, 41-3-205, MCA

NEW RULE III EFFECT OF A DEPARTMENT DETERMINATION THAT AN INVESTIGATION OF CHILD ABUSE OR NEGLECT IS "SUBSTANTIATED" (1) If after an investigation, fair hearing, or any appeal thereof, the department has determined that the results of an investigation are "substantiated," then the department may:

(a) disclose to any person or entity requesting a background check pursuant to 41-3-205, MCA, that the department has information that indicates that a person may pose a risk to children; and

(b) rely on the information to deny a foster care license pursuant to ARM 37.51.216.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 41-3-102, 41-3-202, 41-3-205, MCA

NEW RULE IV CHILD ABUSE AND NEGLECT REPORTS DETERMINED AS SUBSTANTIATED PRIOR TO JANUARY 1, 2021 (1) Any child abuse or neglect report or investigation that was determined by the department as substantiated prior to January 1, 2021, may be disclosed to the appropriate persons or entities pursuant to 41-3-205, MCA.

(2) No hearing is available for child abuse or neglect reports that are not determined as substantiated.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 41-3-102, 41-3-202, 41-3-205, MCA

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

37.5.118 DETERMINATIONS OF REPORTS OF CHILD ABUSE OR NEGLECT: APPLICABLE HEARING PROCEDURES (1) Hearings contesting ~~substantiated~~ reports of child abuse; or neglect or exploitation are determined as reportable pursuant to 41-3-205, MCA, and are available to the extent provided in ARM 37.47.610. The procedures specified in ARM 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337 apply to such hearings, subject to the limitations specified in ARM 37.47.615.

(2) No hearing is available for child abuse or neglect reports that are not determined as ~~unfounded, unsubstantiated, or founded~~ substantiated.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 2-4-612, 41-3-203, 41-3-204, MCA

37.5.304 DEFINITIONS For purposes of this subchapter, unless the context requires otherwise, the following definitions apply:

- (1) "Adverse action" means:
  - (a) through (m) remain the same.
  - (n) ~~a department's substantiation determination of that a report of child abuse, or neglect, or exploitation under ARM Title 37, chapter 47, subchapter 6 is substantiated pursuant to [New Rule II];~~
    - (o) a determination by the department that findings of an investigation of abuse or neglect of a vulnerable adult is reportable pursuant to [New Rule II];
    - (o) through (s) remain the same but are renumbered (p) through (t).
  - (2) through (13) remain the same.

AUTH: 41-3-208, 50-53-103, 52-2-111, 52-2-622, 52-2-704, 53-2-201, 53-2-606, 53-4-212, 53-6-111, 53-6-113, 53-7-102, 53-20-305, MCA

IMP: 41-3-202, 41-3-208, 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, 52-2-603, 52-2-704, 52-2-726, 53-2-201, 53-2-606, 53-6-101, 53-6-107, 53-6-111, 53-6-113, 53-20-305, MCA

37.5.307 OPPORTUNITY FOR HEARING (1) through (4) remain the same.

- (5) A hearing request from a claimant must be received in writing within 30 days of the date of mailing of notice of the adverse action regarding:
  - (a) and (b) remain the same.
  - (c) a substantiated report of child abuse, neglect, or exploitation; ~~or~~
    - (d) a department's determination that an indicated report of abuse, neglect, or exploitation of a vulnerable adult is reportable; or
    - (d) remains the same but is renumbered (e).
  - (6) through (10) remain the same.

AUTH: 2-4-201, 41-3-208, 41-3-1142, 52-2-111, 52-2-112, 52-2-403, 52-2-704, 52-3-304, 52-3-804, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-6-111, 53-6-113, 53-6-402, 53-7-102, 53-20-305, MCA  
IMP: 2-4-201, 41-3-202, 41-3-205, 41-3-1103, 52-2-603, 52-2-704, 52-2-726, 53-2-201, 53-2-306, 53-2-401, 53-2-606, 53-2-801, 53-4-112, 53-4-212, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113, 53-6-402, 53-20-305, MCA

37.47.602 CHILD PROTECTIVE SERVICES: DEFINITIONS For purposes of this subchapter, the following definitions apply:

- (1) through (6) remain the same.
- (7) "Founded report" means that, after an investigation, ~~the investigating worker has determined that there is probable cause to believe that an the~~ department has determined by a preponderance of the evidence that the reported act of child abuse or neglect occurred.
  - (8) and (9) remain the same.
  - (10) "Substantiated report" means that, after an investigation, ~~the investigating worker~~ department has determined by a preponderance of the evidence that the reported act of child abuse, or neglect, or exploitation occurred, ~~and that the perpetrator of the abuse, neglect, or exploitation may pose a danger to~~

children that the subject of the report may be disclosed to the appropriate entities as a person that may pose a danger to children.

(11) "Unsubstantiated" means that, after an investigation, the department could not determine by the preponderance of the evidence that the reported abuse or neglect occurred.

AUTH: 2-4-201, 41-3-208, 52-3-205, MCA

IMP: 2-4-201, 41-3-102, 41-3-202, 41-3-205, 52-3-205, MCA

37.47.610 CHILD PROTECTIVE SERVICES: RIGHT TO FAIR HEARING TO CONTEST SUBSTANTIATED REPORTS (1) The subject of a child abuse or neglect report that is determined by the department to be as substantiated pursuant to [New Rule II] may request a fair hearing.

(2) remains the same.

(3) Upon receipt of the request for a fair hearing, the department will conduct an informal review of the substantiated report and investigation including the entire case record information.

(a) The informal review is limited to the records and documentation relevant to the case, in the case record and any written material provided by the subject. ~~The informal review is not subject to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA.~~

(b) If, after the informal review, the department determines that the results of the investigation are not substantiated report is in error, pursuant to [New Rule II], the department will amend the finding to reflect that the report is unfounded, unsubstantiated, or founded. The subject will be notified of the decision.

(c) If, after the informal review, the department determines that the investigation should be upheld as substantiated report is not in error, pursuant to [New Rule II], the department will notify the department's Office of Fair Hearings so that a fair hearing date and time may be scheduled.

(4) remains the same.

(5) Hearsay statements of the child victim are admissible as evidence in the fair hearing on a substantiated an investigation of child abuse or neglect report. The administrative law judge will determine the weight to give each child victim's hearsay statement. The factors to be considered in determining the weight of the child hearsay statement include:

(a) through (7) remain the same.

(8) A fair hearing is not available for reports that are determined to be unfounded, unsubstantiated, or founded.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 2-4-612, 41-3-203, 41-3-204, MCA

37.47.613 CHILD PROTECTIVE SERVICES: LISTING OF DETERMINATION IN THE PROTECTION INFORMATION SYSTEM (1) When the department ~~substantiates~~ determines that a report of child abuse, or neglect or exploitation is substantiated pursuant to [New Rule II], the department will initially list its determination in its protective services information system provided in ARM



37.47.315 that the report's final determination is pending. The report will be pending for a period of 30 days from the date of the department's initial notice of its substantiation determination to the subject.

(2) If, after receiving the initial notice of the department's substantiation determination that the results of any child abuse and neglect investigation are substantiated, the subject does not request a fair hearing within the 30-day time period required by ARM 37.47.610(2), the department will list the report in its protective services information system as being substantiated.

(3) remains the same.

(4) Reports of child abuse or neglect that are determined to be ~~unfounded or unsubstantiated~~ will be listed in the department's protective services information system described in ARM 37.47.315, subject to the confidentiality provisions of ARM 37.47.614 until purged in accordance with for a period of three years from the date of the report, subject to the retention period set forth in 41-3-202, MCA.

~~(5) Reports of child abuse or neglect that are determined to be founded will be listed in the department's protective services information system described in ARM 37.47.315 for a period of three years from the date of the report, subject to the confidentiality provisions of ARM 37.47.614 and the retention requirements contained in (8).~~

(6) ~~(5)~~ Reports of child abuse or neglect that are determined to be as founded and substantiated will be listed for a reasonable time in the department's protective services information system described in ARM 37.47.315 ~~in perpetuity, subject to the confidentiality provisions of ARM 37.47.614~~ as determined by the department.

~~(7) Child abuse or neglect reports that are received by the department but are not investigated will be listed in the department's protective services information system described in ARM 37.47.315 for informational purposes for a period of one year from the date of the report.~~

~~(8) Informational and founded reports that are associated with a prior or subsequent child abuse or neglect report that is investigated and determined as unsubstantiated or substantiated will be retained in the department's protective services information system described in ARM 37.47.315 for the applicable time period for the associated report.~~

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 41-3-202, 41-3-204, MCA

#### 37.47.614 USE OF DETERMINATIONS IN CHILD ABUSE OR NEGLECT REPORT INVESTIGATIONS (1) remains the same.

(2) Child abuse or neglect reports that are determined to be ~~unfounded, unsubstantiated, or founded~~ cannot be the sole basis to deny a person a license to provide foster care, kinship care, or to be employed in a capacity where they have unsupervised access to children.

(3) Findings, determinations, and associated case records on child abuse or neglect reports that are determined to be substantiated are confidential, but may be disclosed pursuant to 41-3-205, MCA, and [New Rule II].

(4) remains the same.

(5) Nothing in this rule prohibits the department or its personnel from using the facts discovered during an investigation and the associated case record of a child abuse or neglect report investigation, as necessary, to support district court actions under Title 41 of the Montana Code Annotated or ~~the department's~~ an administrative process of the department.

AUTH: 41-3-205, 41-3-304, MCA

IMP: 41-3-205, 41-3-304, MCA

37.51.216 YOUTH FOSTER HOMES: NEGATIVE LICENSING ACTION

(1) remains the same.

(2) The department, through written notice to the applicant or licensee, may deny, suspend, restrict, or revoke a license upon a finding that:

(a) through (d) remain the same.

(e) the foster parent has been ~~named~~ determined as the perpetrator of child abuse or neglect in a substantiated report of child abuse or neglect;

(f) through (4) remain the same.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 2-4-631, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rules I through IV and make amendments to ARM 37.5.118, 37.5.304, 37.5.307, 37.47.602, 37.47.610, 37.47.613, 37.47.614, and 37.51.216 pertaining to substantiation of abuse and neglect reports and disclosure of information.

The department proposes these changes to reflect statute changes made during the 2019 legislature. These changes are a result of House Bill 502. The proposed rule changes will change the way child abuse and neglect investigations are categorized and reported to prospective employers and licensing agencies, including agencies licensing foster and adoptive homes. The statute requires the department to adopt new rules.

Fiscal Impact

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

The department intends for the adoption and amendment of these rules to be effective January 1, 2021.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744;

or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., September 25, 2020.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by phone, email, and mail on August 18, 2020.

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

/s/ Caroline Warne  
Caroline Warne  
Rule Reviewer

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

Certified to the Secretary of State August 18, 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 37.70.305, 37.70.311,	)	PROPOSED AMENDMENT
37.70.401, 37.70.402, 37.70.406,	)	
37.70.407, 37.70.408, 37.70.601,	)	
37.70.607, and 37.70.901 pertaining	)	
to low income energy assistance	)	
program (LIEAP)	)	

TO: All Concerned Persons

1. On September 17, 2020, at 11:00 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 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/96153203389>; meeting ID: 961 5320 3389; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 961 5320 3389. Find your local number: <https://mt-gov.zoom.us/j/96153203389>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 11, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

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

(4) Publicly subsidized housing households whose energy costs are included as a fixed portion of their rent or households who reside in publicly subsidized housing and have an obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season. However, these households are eligible for weatherization assistance as provided in ARM Title 37, chapter 71 and a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP

benefit computed using the benefit matrices and multipliers in ARM 37.70.601 or a minimum payment of \$25, whichever is greater, paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

(5) through (7) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.311 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS AND VERIFIABLE ELIGIBILITY REQUIREMENTS (1) through (6) remain the same.

(7) Eligibility in regard to income is based on the household's income in the ~~six~~ three months immediately preceding the month of application, which will be annualized by multiplying that figure by ~~two~~ four to arrive at the household's annual income.

(8) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.401 DEFINITIONS (1) "Annual gross income" means all nonexcluded income including, but not limited to, wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, workers' compensation, unemployment compensation, social security retirement and disability payments, supplemental security income payments, veterans administration payments, cash public assistance benefits such as temporary assistance for needy families or tribal, state, or county general relief, and capital gains received by the members of the household in the ~~six~~ three months immediately preceding the month of application, which will be annualized by multiplying that figure by ~~two~~ four.

(a) For households with self-employment income, annual gross income means gross receipts for the ~~six~~ three months preceding the month of application minus self-employment deductions for the ~~six~~ three months preceding the month of application which will be annualized by multiplying that figure by ~~two~~ four. For households with self-employment income, annual gross income means annual gross receipts minus self-employment deductions.

(2) through (11) remain the same.

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

(13) through (24) remain the same.

(25) "Modified LIEAP benefit" means the amount paid to eligible households who reside in publicly subsidized housing and whose energy costs are included as a fixed portion of their rent or who have an obligation to pay a base-load electric bill. The modified LIEAP benefit is equal to 5 percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit

Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season or a minimum payment of \$25, whichever is greater paid to the household annually. Households determined eligible for the publicly subsidized housing modified LIEAP benefit, whose economic and housing situation does not change, are income eligible for a period of five years.

(26) through (42) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

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

(1) through (6) remain the same.

(7) Residents of publicly subsidized housing whose energy costs are included as a fixed portion of their rent or who reside in publicly subsidized housing and have an obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season. However, these households are eligible for weatherization assistance as provided for in ARM Title 37, chapter 71 and a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit, or a minimum payment of \$25, whichever is greater, paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

(8) and (9) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.406 INCOME STANDARDS (1) Households with one through eight members with annual gross income at or below 60 percent of the estimated state median are eligible for LIEAP benefits on the basis of income. Households with nine or more members are eligible for LIEAP benefits on the basis of income only if the household's annual gross income is at or below 150 percent of the ~~2019~~ 2020 U.S. Department of Health and Human Services poverty guidelines for a household of that size. Households with annual gross income above the applicable income standard are ineligible for LIEAP benefits, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SNAP, SSI, or TANF-funded cash assistance.

(2) The department adopts and incorporates by reference the department's Low Income Energy Assistance Program (LIEAP) Table of Income Standards, ~~2019-2020~~ 2020-2021 heating season. The LIEAP table of income standards, ~~2019-2020~~ 2020-2021 heating season, is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained

from the Department of Public Health and Human Services, Human and Community Services Division, P.O. Box 202956, Helena, MT 59620.

(3) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.407 EXCLUDED INCOME (1) The following types of unearned income are excluded or deducted:

(a) through (s) remain the same.

(t) foster care payments received for a foster child or adult if the LIEAP applicant has chosen to exclude the foster child or adult from the household; such payments are not excluded if the applicant has chosen to include the foster adult or child as a member of the household. Additionally, any foster care payments received during the ~~six~~ three months immediately preceding the month of application for a foster child or adult who is no longer living in the household at the time of application shall be excluded;

(u) through (w) remain the same.

(x) nonrecurring lump sum payments, such as, but not limited to, federal and state income tax refunds, one time insurance payments or worker's compensation payments and retroactive SSI or SSDI payments, but only to the extent that the payment does not constitute income or benefits for any of the ~~six~~ three months immediately preceding the month of application. The funds received from a nonrecurring lump sum payment are considered as a resource until the funds are spent, however;

(y) through (ab) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

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

(4) The department adopts and incorporates by reference the department's LIEAP Table of Resource Standards, for the ~~2019-2020~~ 2020-2021 heating season. The LIEAP table of resource standards is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, P.O. Box 202956, Helena, MT 59620.

(5) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) The department adopts and incorporates by reference the department's LIEAP Benefit Award Matrix and Table of Multipliers, for the ~~2019-2020~~ 2020-2021 heating season. The LIEAP Benefit Award Matrix is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained

from the Department of Public Health and Human Services, Human and Community Services Division, P.O. Box 202956, Helena, MT 59620. These matrices are used to establish the benefit payable to an eligible household for a full heating season.

The benefit varies by:

(a) through (g) remain the same.

(2) The benefit payable to an eligible household will be computed by multiplying the applicable amount in the table of base benefit levels found in the LIEAP Benefit Award Matrix for the ~~2019-2020~~ 2020-2021 heating season by the applicable matrix amount in the table of income/climatic adjustment multipliers found in the LIEAP Benefit Award Matrix for the ~~2019-2020~~ 2020-2021 heating season.

(3) remains the same.

(4) Publicly subsidized households whose energy costs are included as a fixed portion of their rent or who reside in publicly subsidized housing and have an out-of-pocket obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season. However, these households may be eligible for a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season or a minimum payment of \$25, whichever is greater, would be paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change would be determined eligible for a period of five years.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.607 AMOUNT AND METHOD OF PAYMENT (1) Eligible households that are billed for energy costs directly by the fuel vendor will be paid a benefit in the amount computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season and will be paid as follows:

(a) through (d) remain the same.

(2) Eligible households that pay energy costs for heating their homes that are not billed directly by the fuel vendor because the fuel account is not in the name of a member of the household will be reimbursed for eligible energy costs paid by the household, provided that the amount paid to the household for the heating season does not exceed the benefit amount computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season. Reimbursement will be made by check payable to the household. The household must provide receipts to document paid eligible energy costs claimed. The household must provide receipts to support the paid eligible energy costs to the local contractor by June 20.

(3) and (4) remain the same.

AUTH: 53-2-201, MCA



IMP: 53-2-201, MCA

37.70.901 EMERGENCY ASSISTANCE (1) through (3) remain the same.

(4) Emergency assistance payments may be made on behalf of the eligible household for actual costs necessary to alleviate the emergency. However, no emergency assistance payments will be made for costs which are the liability of a third party, unless the household assigns to the department in writing its rights to such third party payments. ~~Emergency assistance payments are limited to a total of \$250 per household in a 12-month period commencing on the first of October immediately preceding the date of the request for emergency assistance, except as follows:~~

~~(a) An eligible household may receive emergency assistance payments which total more than \$250 in a 12-month period if the local contractor determines services are necessary to alleviate an emergency.~~

(5) through (8) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing the amendment of ARM 37.70.305; 37.70.311, 37.70.401; 37.70.402; 37.70.406; 37.70.407, 37.70.408; 37.70.601; 37.70.607, and 37.70.901 pertaining to the Low Income Energy Assistance Program (LIEAP). LIEAP is a federally funded program to help low income households pay their home heating costs. The department proposes to make the following changes to its administrative rules governing LIEAP.

#### ARM 37.70.305, 37.70.401, 37.70.402, 37.70.601, and 37.70.607

The department is proposing to amend these rules by providing that an updated LIEAP Benefit Award Matrix will be used for the 2020-2021 heating season. ARM 37.70.601 provides that, in most cases, an eligible household's benefit is computed by multiplying the applicable amount in the table of base benefits found in the LIEAP Benefit Award Matrix by the applicable multiplier from the table of income/climatic adjustment multipliers also found in the LIEAP Benefit Award Matrix. The amounts in the table of base benefits vary based on the type of heating fuel the household uses and the type and size of the household's dwelling. The benefit amounts also take into consideration available funding, fuel costs, and the number of households expected to receive benefits in a given heating season, all of which change from year to year. The amounts in the benefit tables in the LIEAP Benefit Award Matrix for 2019-2020 are being revised based on estimates of the amount of funds available to pay LIEAP benefits for the 2020-2021 heating season, the estimated number of households that will apply and be found eligible for LIEAP for the 2020-2021 season, and fuel cost projections for the 2020-2021 heating season. If the amounts in the benefit tables were not updated for the 2020-2021 heating season, the amount of benefits paid out for the season might exceed available funding or a

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

In addition to the table of base benefits, the LIEAP Benefit Award Matrix also contains a table of income/climatic adjustment multipliers. These multipliers are based on a household's income as a percentage of the federal poverty guidelines and also on what part of the state the household lives in. The state is divided into ten regions with different multipliers to take into account the climatic differences from one part of the state to another, which have an impact on residential heating costs. It is not necessary to revise the multipliers annually because the factors on which they are based do not vary significantly from year to year. The department is not proposing any changes to the table of income/climatic adjustment multipliers in the LIEAP Benefit Award Matrix for 2020-2021 for this reason.

#### ARM 37.70.406

The department proposes to amend this rule to provide that it will use the U.S. Department of Health and Human Services' poverty guidelines for 2020-2021, rather than the federal poverty guidelines for 2019-2020, in the table of income standards used to determine eligibility for LIEAP for the 2020-2021 heating season. This change is necessary to take into account increases in the cost of living. The department uses the poverty guidelines for the current year because they are usually higher than the guidelines for the previous year, resulting in higher standards for the current heating season. If the department did not use the updated guidelines, some households might be ineligible for LIEAP due to inflationary increases in the household's income that do not reflect an increase in buying power.

#### ARM 37.70.408

The department is proposing to amend this rule by updating the date of the LIEAP Table of Nonbusiness Resource Limits used to determine LIEAP eligibility based on resources. This is necessary because (5) provides that the dollar limits on non-business resources will be revised annually to adjust for inflation by multiplying the current dollar limits by either the percentage increase in the consumer price index (CPI) for the previous calendar year or 3 percent, whichever is less. The increase in the CPI for 2019 was 2.3%, so the dollar amounts in the LIEAP Table of Nonbusiness Resource Limits for the 2020-2021 heating season will increase by 2.3%. If the resource limits were not revised annually to adjust for inflation, some households might be ineligible for LIEAP because their resources exceed the resource limit although the buying power of their resources was less than in previous years due to inflation.

#### ARM 37.70.311, 37.70.401, and 37.70.407

The department is proposing to amend these rules to change LIEAP eligibility related to household income based on six months to income based on three months annualized. This will allow for more low-income households to qualify for LIEAP.

The U.S. Department of Health and Human Services, Administration for Families and Children, Office of Community Services, the federal agency that administers LIEAP, issued guidance to encourage states to develop LIEAP policies and procedures that do not discourage, delay, or deny LIEAP benefits to eligible persons. At times, the current LIEAP eligibility requirement related to household income based on six months discourages, delays, or causes denial of LIEAP benefits to eligible persons. Often LIEAP applications are incomplete due to missing income verification. If a household fails to provide information or documentation necessary for a determination of eligibility within 45 days of the date of the most recent request for additional information, the application will be denied as per ARM 37.70.311(1)(c). Changing the household income verification from six months to three months annualized will decrease the number of denials and expedite the issuance of LIEAP benefits to low income households.

#### ARM 37.70.901

The department is proposing that the language that limits emergency assistance payments to \$250 per household in a 12-month period be removed. This will allow ARM 37.70.901 to reflect current practice. The department does not limit the amount of expenditures per household in a 12-month period. Contingency Revolving Funds are used to alleviate emergency situations. The department does not restrict the amount of funds that can be used to alleviate an emergency situation. This change will ensure the rule matches current program policies and procedures.

#### Fiscal Impact

LIEAP is 100 percent federally funded. Based upon the information available at this time, the department estimates that Montana will receive comparable funding to the last heating season. Energy burden reduction levels resulting from the LIEAP benefits for households using all types of heating fuel and for all dwelling types are expected to be comparable to the 2019-2020 heating season. It is estimated that 20,000 households will qualify for LIEAP benefits this year which is comparable to last year.

The department intends to apply these changes retroactively to October 1, 2020. A retroactive application of these proposed rule amendments does not result in a negative impact to any affected party.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., September 25, 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 rules will not significantly and directly impact small businesses.

/s/ Ann Hefenieder  
Ann Hefenieder  
Rule Reviewer

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

Certified to the Secretary of State August 18, 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 37.104.3025 pertaining to ) PROPOSED AMENDMENT  
trauma facility designation )

TO: All Concerned Persons

1. On September 22, 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/91528178800>; meeting ID: 915 2817 8800; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 915 2817 8800. Find your local number: <https://mt-gov.zoom.us/j/91528178800>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 11, 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 [dpshslegal@mt.gov](mailto:dpshslegal@mt.gov).

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

37.104.3025 ~~LENGTH OF DESIGNATION PERIOD~~ (1) through (4) remain the same.

(5) The department may waive any designation expiration dates if the facility provides sufficient written justification and/or the department determines a waiver is necessary due to an emergency or disaster declaration by the governor, county, or city, or in the event of an unforeseen natural disaster. A waiver will be issued only if the following criteria are met:

(a) the waiver is necessary to avoid significant financial or other hardship to the facility; and

(b) granting the waiver would not jeopardize patient care or public health and safety.

(6) A waiver issued under (5) will be issued on a temporary basis not to exceed a period of 12 months.

AUTH: 50-6-402, MCA  
IMP: 50-6-402, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.104.3025 to allow for a temporary waiver of designation requirements for trauma facilities in limited circumstances. Renewal of a trauma facility's designation requires the department to perform an on-site review and assessment of the facility. During the COVID-19 pandemic it has become clear that a rule change is needed to allow for a waiver under certain limited circumstances such as a public health emergency or disaster when the department is unable to physically perform designations due to the safety of persons involved in the designation review.

The State Trauma Care Committee (STCC) met on May 13, 2020, and recommended the department pursue a rule amendment to address this issue. The STCC is comprised of members of various medical groups across the state including: Montana Trauma Coordinators; Central Regional Trauma Advisory Committee (RTAC), Eastern RTAC; Committee on Trauma/American College of Surgeons (ACS); Montana Medical Association; MT Hospital Association; MT Emergency Nurses Association; Emergency Medical Services (EMS) Association; Indian Health Service, Western RTAC; Private Ambulance Operators; and American College of Emergency Physicians.

The proposed rule permits a temporary waiver to be granted when it will not jeopardize patient care or public health and safety. The proposed rule allows for flexibility in the event of an emergency or disaster and ensures continuity of trauma care facility designations during an emergency or disaster that temporarily precludes the department from conducting on-site assessments of such facilities.

#### Fiscal Impact

There is no anticipated fiscal impact with respect to this rulemaking.

The department intends for these amendments to be effective upon adoption.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., September 25, 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.

/s/ Robert Lishman

Robert Lishman  
Rule Reviewer

/s/ Sheila Hogan

Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State August 18, 2020.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.20.156, 42.20.601,	)	PROPOSED AMENDMENT AND
42.20.610, 42.20.620, 42.20.640,	)	REPEAL
42.20.655, 42.20.675, 42.20.681, and	)	
42.20.682; and the repeal of ARM	)	
42.20.606, 42.20.615, 42.20.630, and	)	
42.20.635 pertaining to classification	)	
and valuation of class three property	)	
(i.e., agricultural land)	)	

TO: All Concerned Persons

1. On September 28, 2020, at 10:00 a.m., the Department of Revenue will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested persons may access the public hearing in the following ways:

- (a) Join Zoom Meeting: <https://mt-gov.zoom.us/j/96259182849>, Meeting ID: 962 5918 2849;
- (b) Dial by Telephone: +1.406.444.9999 or +1.646.558.8656, Meeting ID: 96259182849;
- (c) Join by SIP: [96259182849@zoomcrc.com](mailto:96259182849@zoomcrc.com);
- (d) Join by H.323 (Polycom): 162.255.37.11## 96259182849; or
- (e) Join by Skype for Business: <https://mt-gov.zoom.us/skype/96259182849>.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on September 4, 2020. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or [todd.olson@mt.gov](mailto:todd.olson@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY. ARM Title 42, chapter 20, subchapter 6 contains the department's administrative rules regarding the classification and valuation of class three property (i.e., agricultural land), as authorized under 15-7-201, MCA, et. seq.

Based on the department's periodic review of the rules subchapter, other related rules, and in preparation for the upcoming two-year reappraisal cycle for class three property which begins January 1, 2021, the department observes that certain rules contain redundancies to other rules within the subchapter, contain outdated definitions, text usage and rule references; and in some cases, do not reflect current department practices.

The department proposes to revise and relocate relevant content of ARM 42.20.606, 42.20.615, 42.20.630, and 42.20.635 into ARM 42.20.620 to provide



improved rule organization for agricultural land application and classification requirements for land totaling less than 160 acres. The department proposes to repeal ARM 42.20.606, 42.20.615, 42.20.630, and 42.20.635 based on the transfer of content.

The department proposes to amend definitions in ARM 42.20.601, amend ARM 42.20.610, 42.20.640, 42.20.655, and 42.20.682 to remove unnecessary redundancies to other rules, update language usage for consistency, and insert necessary cross-references.

The department further proposes to amend: ARM 42.20.156 to update land classification change criteria; ARM 42.20.675 to implement House Bill 24 (HB 24) amendments made to 15-7-201, MCA, made by the 2019 Montana Legislature; and ARM 42.20.681 to update the agricultural commodity prices and values for the upcoming reappraisal cycle.

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

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

42.20.156 AGRICULTURAL AND FOREST LAND USE CLASSIFICATION CHANGE CRITERIA (1) The department will change the classification ~~and valuation~~ of land from class three, as defined in 15-6-133, MCA, or class ten, as defined in 15-6-143, MCA, to class four, as defined in 15-6-134, MCA, when ~~any of~~ the following land use change criteria are met:

(a) restrictive covenants, easements, deed restrictions, servitudes, conservation easements, or other legal encumbrances that exist and ~~when~~ are enforced ~~to effectively~~ prohibit forest or agricultural use of the land;

(b) the ~~forest~~ land ~~does not no longer~~ meets the ~~eligibility requirements~~ definition of forest land in 15-44-102, MCA, the forest land classification requirements in ARM 42.20.705, and subsequently does not meet the agricultural land classification requirements of 15-7-202, MCA;

(c) the land contains three or more of the following physical site improvements:

(i) through (vii) remain the same.

(viii) a fire hydrant; or

(ix) landscaping developed for the aesthetic benefit or security of all the landowners; ~~or~~

(d) remains the same.

~~(2) Examples of what would not be considered a change in land classification based on this rule are:~~

~~(a) utility lines that run across the property but are provided for the benefit of a third party and not for access or the benefit of the property owner;~~

~~(b) easement access roads that are provided for the benefit of a third party and not for access or the benefit of the property owner.~~

~~(3) (2) When the criteria in (1) are met, the department will value land will be valued at 100% of market value under class four, as provided in 15-8-111, MCA instead of its productivity value when any of the criteria in (1) are met.~~

(3) Examples of land use criteria change not considered for a change in land classification include utility lines that cross a property or easement access roads provided for the benefit of a third party and not for access or the benefit of the property owner.

AUTH: 15-1-201, 15-7-111, 15-44-105, MCA

IMP: 15-1-101, 15-6-133, 15-7-103, 15-7-111, 15-7-202, 15-7-206, 15-7-207, 15-7-210, 15-44-102, 15-44-103, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.20.156 beginning with the catchphrase to clarify that the rule pertains to land classification change criteria for class three and class ten property, but not specifically agricultural and forest land. Class three property includes agricultural land, nonproductive patented mining claims, and nonqualified agricultural land as provided in 15-6-133, MCA.

The department proposes deleting the words "and valuation" from (1) because the references to 15-6-133, 15-6-134, and 15-6-143, MCA, pertain to land classification and not land valuation. The department proposes amendments to (1)(a) through (c) to remove unnecessary verbiage that does not lend to understanding how the department classifies land according to its use and proposes to include relevant statutory attribution and administrative rule cross-references.

The department proposes revising text in (2) and (3) for style, plain language usage, and inclusion of necessary cross-referencing.

42.20.601 DEFINITIONS The following definitions apply to this subchapter:

~~(1) "Agricultural application" means department form AB-3 used by taxpayers to request agricultural classification of land.~~

~~(2) (1) "Agricultural products produced by the land" means crops or forage raised directly in the land's soil and used to support livestock. "Agricultural products produced by the land" does not mean land that is used as a "platform" for agricultural activities use such as. Examples of agricultural activities that do not meet the definition "agricultural products produced by the land" are the feeding of livestock from external sources that allow stocking rates to exceed the carrying capacity or crops produced in potted soil that are not grown directly in the land's soil.~~

~~(3) (2) "Ancillary improvements," as provided in 15-1-101, MCA, means improvements necessary for the production and storage of raw agricultural commodities. These improvements do not include improvements that are used to process, treat, or package raw agricultural commodities into a value-added product, or improvements designed to accommodate and serve the public.~~

~~(4) through (6) remain the same but are renumbered (3) through (5).~~

~~(7) (6) "Bona fide agricultural operation" means an agricultural enterprise in which the land actually produces agricultural crops products provided under the term, agricultural, defined in 15-1-101, MCA, that directly contribute agricultural income to a functional agricultural business.~~

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

~~(9) "Classification" is the agricultural use of the land. The department classifies agricultural land into one of five agricultural use classes. The department's five agricultural uses are described in ARM 42.20.660 through 42.20.680.~~

~~(10)~~ (8) "Conservation reserve program (CRP)" means a federal farm program administered by the Farm Service Agency (FSA) that pays agricultural landowners to remove land from crop production on highly erodible soils for a specified period of time.

~~(11)~~ (9) "Contiguous parcels of land" means separately described parcels of land under one ownership that physically touch one another or would have touched one another were the acreages not separated by:

(a) deeded roads and highways;<sub>i</sub>

(b) ~~navigable~~ rivers and streams;<sub>i</sub>

(c) railroad lines;<sub>i</sub> or

(d) federal or state land that is leased from the federal or state government ~~by the taxpayer~~ the owner whose land is physically touching the federal or state land.

(12) and (13) remain the same but are renumbered (10) and (11).

~~(14) "Effectively prohibit" means to result in the permanent cessation of a bona fide agricultural operation.~~

~~(15)~~ (12) "Income from agricultural production" means the gross amount of income received from the sale of food, feed, fiber commodities, livestock, poultry, bees, biological control insects, fruits, vegetables, and also includes sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes, income from farm rental, the sale of draft, breeding, dairy, or sporting livestock, the share of partnership or family corporation gross income received from a farming or ranching business entity, or the taxpayer's share of distributable income from an estate or trust involved in an agricultural business. When the income from agricultural production is used to qualify land for agricultural land classification, it must be reportable income for income tax purposes.

(a) Wages received as a farm employee or ~~wages~~ received from a farm corporation are not gross income from farming.

(b) ~~A bona fide agricultural operation may combine the income of more than one parcel to meet the income requirements. The parcels must be dependent upon each other in the agricultural operation as a whole.~~

~~(16)~~ (13) "Land use" means ~~land placed into a certain type of service or utilization, such as the agricultural uses described in ARM 42.20.660 through 42.20.680.~~ the utilization of land which directly relates to its classification, in accordance with 15-7-103, MCA.

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

~~(18)~~ (15) "Livestock" means the same as it is defined in 15-1-101, MCA; ~~means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.~~

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

~~(20) "Noncontiguous parcels of land" means parcels of land under one ownership that are physically separated from one another by land in a different ownership other than deeded roads and highways, navigable rivers and streams,~~

railroad lines, or federal or state land that is leased from the federal or state government by the taxpayer whose land is physically touching the federal or state land.

(21) (17) "Nonqualified agricultural land" means parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation classification as agricultural land under 15-7-202(1), MCA.

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

(23) ~~"Owner" means that the applicant and owner of record are the same individual, corporation, partnership, sole proprietorship, or trust.~~

(24) and (25) remain the same but are renumbered (19) and (20).

(26) (21) "Poultry" means domesticated birds raised for eggs, meat, or other commercially marketable products that are not included in the definition of livestock as described in 15-1-101, MCA. the same as it is defined in 15-1-101, MCA.

(27) ~~"Productive capacity or productivity" means the ability of a soil to produce crops or forage under the environment where it occurs and under a specified system of management. The productive capacity can change over time due to changes in soil fertility or more efficient farming practices and equipment.~~

(28) ~~"Productive capacity value and productivity value" are synonymous and interchangeable terms for the per-acre value of the agricultural land based on its productive capacity. The productive capacity value is determined using the formula described in 15-7-201, MCA, and is further identified in ARM 42.20.660, 42.20.665, 42.20.670, 42.20.675, and 42.20.680.~~

(22) "Productivity" means the ability of a soil to produce crops or forage at the location, and under the environment and a specified system of management. Productivity can change over time due to changes in soil fertility or more efficient farming practices and equipment.

(23) "Productivity value" means the per-acre value of the agricultural land based on its productivity. The productivity value is determined using the formula provided in 15-7-201, MCA, and described in the subchapter.

(29) (24) "Residence" means all conventionally constructed homes, as well as all mobile homes and manufactured housing, that may serve as living quarters for one or more individuals or a family, regardless of actual occupancy. ~~The occupancy of the residence shall be irrelevant.~~

(30) through (32) remain the same but are renumbered (25) through (27).

(33) (28) "Sole proprietorship" for the purposes of qualifying land for agricultural ~~assessment and taxation~~ land classification under the provisions of 15-6-133 and 15-7-202, MCA, and ARM 42.20.625 42.20.682, means an ownership of agricultural land in the name of one or more individuals which can be any of the following: grandparent(s), parent(s), spouse, sibling(s), children, stepchildren, aunt(s), uncle(s), and first generation cousin(s).

(34) (29) "Under one ownership" means one party owns when two or more parcels of land when the title is in the party's are deeded under an owner's identical name or names; or when an owner has obtained department recognition of parcels under one ownership through the affidavit process described in ARM 42.20.620 the party has received title in the parcels by a transferring instrument such as a deed, contract for deed, or judgment; and the party has the present right to possess and use the parcels.

AUTH: 15-7-111, MCA

IMP: 15-1-101, 15-6-133, 15-7-201, 15-7-202, MCA

**REASONABLE NECESSITY:** In addition to the general statement of reasonable necessity, the department proposes striking current (1) as the definition is not used in the subchapter and it incorrectly identifies the agricultural land classification application.

The department proposes terminology changes in proposed (1) to reflect terminology proposed in ARM 42.20.620 which also exists in ARM 42.20.683. The department also proposes striking other substantively redundant text from proposed (1), and text which is already provided in ARM 42.20.683(1)(d).

In proposed (2), the department proposes inserting a cross-reference to 15-1-101(1)(d)(ii)(C), MCA. The department is proposing this amendment to tie the term back to the statute.

In proposed (6), the department proposes replacing the word "crops" with "products" and inserting necessary verbiage to clarify necessity for the inclusion of agricultural crops under the broader term of "agricultural products" that are grown, raised, or produced for commercial purposes and defined as "agricultural" in 15-1-101, MCA.

The department proposes striking the definition of "classification" in current (9), as it is unnecessary since 15-7-103, MCA, provides that ". . . [a]ll lands must be classified according to their uses or use." Additionally, the rule cross-references in the definition are obsolete since rules mentioned were repealed effective February 1, 2020.

In proposed (8), the department proposes updating the definition of Conservation Reserve Program (CRP) to include the name of the federal Farm Service Agency (FSA) that administers the program for necessary attribution.

The department proposes amending proposed (9) to make the definition consistent with "contiguous parcels of land" defined in ARM 42.20.701. The amendment in (9)(b), which removes the navigability of rivers and streams requirement for parcel contiguity, is consistent with prior department rulemaking adopted under MAR Notice No. 42-2-977 (2017). The department also proposes striking the word "taxpayer" in proposed (9)(d) and replacing with "owner" to better identify that the leasing party of government land must be the same owner of the adjacent property for the parcels to be considered contiguous for land valuation purposes.

The department proposes removing the definition in current (14), because its meaning is not consistent with plain language usage and the verbiage is applied more correctly throughout the subchapter. Maintaining the definition could also lead to confusion with the definition of bona fide agricultural operation in (6). The department is proposing a similar amendment to ARM 42.20.156 to clarify how "effectively" should be interpreted by property owners.

In proposed (12), the department proposes transferring the content from (b) to ARM 42.20.620(4) because the text contains requirements in addition to the definition and ARM 42.20.620 is a more appropriate location.

The department proposes to amend the definition of "land use" in proposed (13) by simplifying verbiage, striking obsolete rule references, and including the statutory authority of 15-7-103, MCA, since land is classified according to its use.

In proposed (15), the department proposes to maintain the definition but remove the examples as they are redundant to what is included in the definition in 15-1-101, MCA.

The department proposes striking the definition of noncontiguous parcels of land in current (20), as the definition is the direct opposite of contiguous parcels of land defined in proposed (9) and offers no measurable benefit from its continued use.

In proposed (17), the department proposes to correct a misstatement in the definition that could lead to confusion by removing the words "valuation, assessment, and taxation," because nonqualified agricultural land is not valued, assessed, or taxed as agricultural land because it is not eligible for that classification. Land valuation and taxation are based on the land's classification.

In proposed (22), the department proposes to maintain the definition but remove the examples as they are redundant to what is included in the definition in 15-1-101, MCA.

The department proposes removing the definitions in current (27) and (28) and providing revised definitions in proposed (22) and (23). The department contends that striking "productivity capacity" and "productive capacity value" with what is stated in 15-7-201, MCA, will simplify terminology. These proposed changes reflect the department's efforts to make its rules easier to understand and more concise.

The department proposes amending the definition in proposed (29) for correct use of terminology consistent in the subchapter and to update cross-references.

The department is also proposing to remove the obsolete rule reference to ARM 42.20.625 which was repealed in December 2014.

The department proposes amending the definition in proposed (30) to improve rule text and to reflect the affidavit process for department acknowledgment of ownership of parcels in ARM 42.20.620(2).

42.20.610 CLASSIFICATION AND APPRAISAL OF EASEMENTS ON AGRICULTURAL LAND (1) Road, irrigation ditch, or power line easements that do not transfer title to such rights-of-way are taxable and will be classified ~~and valued~~ as adjoining agricultural land.

(2) A deeded right-of-way that is conveyed through a deed or other instrument, from a private owner to a government agency or other tax-exempt entity is not taxable and the acreage is deducted from the ownership in which it is located. If the deeded right-of-way splits two or more ownerships, such as along a deeded county road, the department will deduct proportional amounts of acreage from each ownership. A record of the conveyance must be available in the local county clerk and recorder's office.

~~(3) To determine the total acreage of land devoted to the easement or deeded right-of-way, the department shall determine the square footage and convert the square footage to acres by dividing the square footage by 43,560.~~

AUTH: 15-7-111, MCA

IMP: 15-7-103, 15-7-201, 15-7-206, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.20.610 by revising the catchphrase and to remove the word "valued" in (1), because the rule pertains to classification, and not classification and appraisal.

The department also proposes inserting "the acreage" in (2) to clarify that a right-of-way's acreage is deducted from the ownership when a deed or other instrument is conveyed to a government agency or other tax-exempt entity.

The department proposes removing (3) as the formula for converting square feet to acres is informational only and is not necessary in the rule.

42.20.620 CRITERIA APPLICATION AND CLASSIFICATION REQUIREMENTS FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING LESS THAN 160 ACRES (1) Multiple parcels of land, consisting of totaling less than 160 acres, both contiguous and noncontiguous, in the same under one ownership, actively devoted to agricultural use and part of a bona fide agricultural operation may be classified as agricultural land for the current tax year if the property owner submits an Agricultural Land Classification Application (application) to the department by March 1 and the land must meets all of the production and income qualification tests requirements provided in these rules this rule, ARM 42.20.682, and ARM 42.20.683 for classification as agricultural land classification. The department's application review process may include a field evaluation, additional information requests, and will conclude with the approval or denial of an application.

(2) A person who owns contiguous parcels of land deeded in non-identical names may file an affidavit with the department attesting that the names are one and the same person, for the department's determination of under one ownership.

(2) (3) Noncontiguous parcels of land in the same ownership and actively devoted to agricultural use can that are an integral part of the agricultural operation may combine agricultural production income and/or livestock carrying capacity of the parcels of land to meet eligibility agricultural land classification requirements. Each noncontiguous parcel of land, less than 160 acres in size and not a that is not part of a larger agricultural operation, must individually meet the agricultural eligibility criteria land classification requirements set forth in this rule.

(3) An applicant for agricultural land classification must prove that the land indicated in the application actually produced agricultural crops as defined in 15-1-101, MCA.

(4) A personal property reporting form that lists the farm and ranch personal property and livestock on the land must be completed by the current landowner and be on file at the local department office.

(5) If agricultural products, other than livestock, are marketed from the land identified in the application, the applicant must provide proof that the parcel(s) indicated in the application produced at least \$1,500 gross agricultural income each year.

(4) The land must produce an agricultural product provided under the term

"agricultural" found in 15-1-101, MCA.

~~(6)~~ (5) ~~Income must be from~~ The property owner must submit documentation to verify \$1,500 annual gross income or more in sales of agricultural products, other than livestock, marketed by, or received by the property owner, the property owner's family members, or the property owner's agent, employee, or lessee. Acceptable proof of income documentation must include:

(a) sales receipts; cancelled checks, copies of income tax statements, or other written evidence of sales transactions;

~~(b) cancelled checks;~~

~~(c) copies of income tax statements;~~

~~(d) other written evidence of sales transactions;~~

~~(e)~~ (b) ~~annual rental or lease payments of at least \$1,500, provided there is demonstrated proof of agricultural activity on the land and if the land is in an agricultural use and capable of sustaining that activity~~ agricultural use; or

~~(f)~~ (c) ~~annual rental payments of at least \$1,500, made under from the federal conservation reserve program (CRP), or a similar program that reimburses the landowner for removing the land from the current agricultural use and placing it in a different agricultural use.~~

~~(7)~~ (6) ~~For parcels of land under 20 acres, (6)(e) (5)(b) and (f) (c) are not considered eligible agricultural income for this rule~~ sources.

~~(8) The sale of biological control insects shall be considered agricultural income if the insects are supported solely from noxious weeds grown on the land indicated on the application.~~

~~(9)~~ (7) ~~For grazing land, the land must be capable of sustaining~~ Land used to raise livestock must have the capacity to produce forage based on the United States Department of Agriculture, Natural Resources and Conservation Service (NRCS), soil survey to support a minimum carrying capacity expressed in animal unit months, as provided in 15-7-201, MCA, and ARM 42.20.681. The minimum animal unit months must equate to \$1,500 in annual gross income as determined by the Montana State University-Bozeman's Department of Agricultural Economics and Economics, with cattle as the base.

~~(a) For the reappraisal cycle ending December 31, 2020, the Montana State University-Bozeman's Department of Agricultural Economics and Economics determined the minimum number of animal unit months of carrying capacity to be 31 animal unit months.~~

~~(b) The department will use the NRCS soil survey information to calculate the carrying capacity for; nonirrigated native grazing land.~~

~~(a) non-irrigated native grazing land from the NRCS soil survey information;~~

~~(c)~~ (b) ~~For non-irrigated domestic grazing land, by increasing the department shall increase the estimated non-irrigated native grazing land carrying capacity in (a) by 50 percent; and~~

(c) grazing land from site-specific and pertinent information provided by the property owner.

~~(10)~~ (8) ~~For land other than grazing land that is used primarily to raise crops for consumption by humans, livestock, poultry, or other animals in the agricultural operation rather than for market, the applicant~~ property owner must prove that the land on the application produced the annual equivalent of \$1,500 in gross



agricultural income from these crops. ~~Proof of income~~ Income documentation must include:

~~(a) a written estimate~~ record of the weight or quantity of ~~food or other eligible agricultural product~~ crop produced and the current commodity price. ~~The weight provided must be multiplied by the current commodity price to determine that the minimum annual gross income of \$1,500 was met; and~~ The crop value is determined by multiplying the quantity by the commodity price. Receipts from the sales of agricultural products from livestock, domestic animals, and wildlife, provided in 15-1-101, MCA, are not eligible for meeting the \$1,500 annual gross income requirement but may be submitted to prove a commercial purpose of operation.

~~(b) if the consumption was from livestock, or the livestock was consumed by humans, the land must be capable of sustaining the minimum number of animal unit months of carrying capacity described in (9), with cattle as the base.~~

~~(11) (9) Non-irrigated Ssummer fallow farmland must produce a minimum of \$1,500 in agricultural crop income in the year it is farmed to be valued as agricultural land~~ meet the income requirements in (5) and (6) in the year it is cropped.

(10) Annual gross income documentation from the prior year may be submitted if:

(a) the land experienced a production failure in the current year that was beyond the control of the property owner from drought, fire, hail, insect infestation, frost, flood, or excessive rain. The department does not allow the results of overgrazing and other management practices as sources of production failure;

(b) the property owner; the property owner's family members; or the property owner's agent, employee, or lessee delayed marketing agricultural products they grew, raised, or produced from the land, to take advantage of future economic conditions. The marketing delay must not exceed 12 months from the initial date of application for agricultural land classification.

~~(12) A parcel or parcels of land less than 20 acres that meet all of the following criteria will remain classified and valued as agricultural land or as nonqualified agricultural land as defined in 15-6-133 and 15-7-202, MCA. The criteria that must be met are:~~

~~(a) the parcels are contiguous or noncontiguous parcels of land under one ownership;~~

~~(b) the parcel or parcels previous to a reduction in acreage as defined in (c) totaled 20 acres or more in size and qualified as agricultural land or as nonqualified agricultural land under 15-6-133 and 15-7-202, MCA;~~

~~(c) a portion of the parcel or parcels was taken by or given without compensation, or sold for a public use as described in 70-30-102, MCA, to the federal government, the state, a county, or a municipality, and that action reduced the number of acres in the parcel or parcels to less than 20 acres; and~~

~~(d) since the reduction in acreage occurred, the parcel or parcels have not been further divided or devoted to a residential, commercial, or industrial use, and there are no covenants or other restrictions that when enforced effectively prohibit agricultural use.~~

~~(13) A parcel or parcels of land that meet the criteria in (12)(a) through (d) are eligible for the classification determination identified in (12) regardless of when the acreage reduction occurred. However, taxpayers must notify the department of~~

their eligibility in writing by submitting a Request for Informal Classification and Appraisal Review, Form AB-26, within 30 days from the date on the classification and appraisal notice for eligibility to begin in the first year of the two-year valuation cycle, or by June 1 in the second year of the valuation cycle for eligibility to begin in the second year.

(14) ~~No refunds of taxes resulting from a reclassification of parcels under this part will be allowed for any tax year prior to the tax year in which the taxpayer notifies the department of their eligibility in (13).~~

(15) ~~For contiguous and noncontiguous parcels of land under one ownership as defined in ARM 42.20.601 totaling less than 20 acres in size, any acreage in excess of that stated in the forest land classification in ARM 42.20.705 is classified as agricultural provided the acreage is actively devoted to qualifying agricultural use.~~

(11) Land previously classified as agricultural land or nonqualified agricultural land in a prior year which is now reduced to less than 20 acres as the result of eminent domain, authorized under 70-30-102, MCA, maintains its classification unless the land has been further divided or is devoted to a residential, commercial, or industrial use, as provided in 15-7-202, MCA. The property owner must notify the department of the land's eligibility to maintain its agricultural land classification by submitting a Request for Informal Classification and Appraisal Review, Form AB-26.

(12) For land less than 20 acres under one ownership with a portion of the land classified as forest land, the remainder of the acres are classified as agricultural land if the land meets the requirements of agricultural land classification.

(13) The department may change an agricultural land classification if the:

(a) property changes ownership;

(b) property is subdivided; or

(c) department believes the property no longer meets the agricultural land requirements provided in the subchapter.

(14) Land classified as agricultural land will remain classified as agricultural land until the department determines the land use has changed.

(15) If the property owner disagrees with the department's reclassification action, the owner must submit an Agricultural Land Classification Application, within 30 days of the date on their reclassification notification.

(16) If a property owner owns personal property related to the bona fide agricultural operation, and the market value of the personal property is above the threshold provided in 15-6-138, MCA, then the property owner must submit to the department each year a completed personal property reporting form in accordance with the requirements provided in 15-8-301, MCA, and ARM 42.21.158.

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-7-102, 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes several amendments within ARM 42.20.620 to improve clarity of content organization and classification requirements throughout the rule. The department proposes revising the catchphrase to reflect the proposed changes in the rule content which are described below.

The department proposes transferring classification application content from ARM 42.20.615(1) and consolidating it with existing and revised text in current (1). The department proposes changing the land classification application submission deadline to March 1 so the department may begin the processing of agricultural land classification applications before classification and appraisal notices are sent to property owners, which will help them determine earlier any potential property classification changes for the current tax year. The department also proposes providing cross-references for necessary attribution of requirements stated in related rules. The department proposes transferring content from ARM 42.20.615(2) and revising it into proposed (2).

The department proposes (4) to include the necessary statutory authority that agricultural land must first meet the agricultural products requirements described in 15-1-101, MCA.

In proposed (5), the department's amendments seek to update documentation reviews of annual gross income requirements. The department also proposes revising Conservation Reserve Program (CRP) references with the definition proposed in ARM 42.20.601. The department proposes revising internal references in (6) for consistency with reorganized (5).

The department proposes striking current (8) to eliminate the redundant language found in ARM 42.20.683(4).

In proposed (7), the department proposes replacing unnecessary text with cross-references to 15-7-201, MCA, and ARM 42.20.681, which is appropriate. The department also proposes to provide a process in proposed (7)(c) that permits property owners to provide pertinent and site-specific data for their land to the department when NRCS soil survey productivity data may be absent or when a property owner disputes the productivity rating from the soil survey.

The department proposes amendments to proposed (8) to increase accuracy and understanding of the income requirements for crops consumed by animals that are part of a commercial agricultural operation; and remove the word "human," as it is not included in the definition of "agricultural" in 15-1-101, MCA. This is a change from past practice, adopted in 2004 under MAR Notice No. 42-2-733, in response to property tax appeals involving crops raised for human consumption. The department has researched the matter further and confirms that the value of agricultural products for the property owner's consumption may not be used to meet the \$1,500 annual gross income requirement.

Further, in proposed (8), the department also proposes the removal of vague or potentially contradictory text. For instance, an estimate is not proof of the harvest and the word "product" implies that the item does not have to be the raw commodity but can be value-added items which contradicts statute. Other amendments in proposed (8) seek to assist property owners with additional information regarding receipts from the sales of agricultural products from livestock, poultry, or other animals.

The department proposes revising text in proposed (9) to lessen redundancy and better describe summer fallow farm land. Other revisions proposed include inserting a cross-reference to the income requirement in proposed (5) and correcting word usage in the section.

The department proposes transferring content from ARM 42.20.630 into

proposed (10) and (10)(a), and text from ARM 42.20.635 into proposed (11)(b).

The department proposes consolidating and revising content in current (12) and (13) as proposed (11). Text is proposed for revision for consistency of terminology or where the text is unnecessarily redundant to that provided in 15-7-102, MCA.

The department proposes removing current (14) as unnecessary since a Form AB-26 cannot be submitted for a classification or valuation change for prior years in accordance with 15-7-102, MCA.

The department proposes transferring text from ARM 42.20.615(4) to proposed (12) through (15) to consolidate all of the requirements for agricultural land classification for land totaling less than 160 acres.

Lastly, proposed (16) reflects the department's revisions to text from current (4) because certain text is obsolete because of legislative changes. The 2013 Legislature passed Senate Bill 96 and changed the class eight (personal property) exemption threshold from \$20,000 to \$100,000. Property owners must submit a personal property reporting form to the department each year they own personal property (business equipment) with a market value above the \$100,000 threshold, pursuant to 15-6-138, MCA. The department also included the cross reference to the personal property reporting requirements found in ARM 42.21.158 for necessary attribution of authority. The word "livestock" was not included in proposed (16) text because livestock is no longer reported for per capita fees on the personal property reporting form, effective since 2015.

42.20.640 VALUATION CLASSIFICATION OF LAND OWNERSHIPS 160 ACRES OR LARGER IN SIZE (1) In accordance with the provisions of 15-7-202, MCA, contiguous parcels of land with 160 acres or more and under one ownership as defined in ARM 42.20.601 ~~160 acres or larger in size shall be valued~~ classified as agricultural land, provided that no portion of the ownership land meets the criteria requirements for forest land classification and ~~there are no covenants, easements, deed restrictions, or other operations of law that when enforced prohibit the land from being used as agricultural, or the land is not used for residential, commercial, or industrial purposes~~ other restrictions described in ARM 42.20.156.

~~(2) Under this rule, an ownership or the portion of an ownership meeting the criteria for forest land classification set forth in ARM 42.20.156, 42.20.705, and 42.20.710 shall be classified and valued as forest land.~~

~~(3) Any remaining acreage in the ownership parcel will be classified and assessed as agricultural land provided the land is not used for residential, commercial, or industrial purposes, and that the land doesn't have stated restrictive covenants, easements, deed restrictions, servitudes, conservation easements, or other legal encumbrances that when enforced effectively prohibit agricultural use. If the remaining acreage in the ownership parcel is either used for residential, commercial, or industrial purposes, or has stated covenants or other restrictions that when enforced effectively prohibit agricultural use, the remaining acreage will be classified and valued as class four land.~~

~~(4) For contiguous parcels of land that are 160 acres or larger in size, and under one ownership as defined in ARM 42.20.601, any acreage exceeding that which meets the criteria for forest land set forth in ARM 42.20.156, 42.20.705, and~~

~~42.20.710, or has stated restrictions that when enforced effectively prohibit agricultural use, or is used for residential, commercial, or industrial purposes, shall be assessed and taxed as land not specifically included in another class in accordance with 15-6-134(1)(a), MCA.~~

~~(5) (2) Land under the CRP, the Integrated Farm Management (IFM) program, or any other similar program that reimburses the landowner to remove the land from the current agricultural use and places it in a different agricultural use shall be shall remain classified and valued in the same land use category the acreage was in when it became eligible as it was prior to enrollment for in the programs.~~

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-7-201, 15-7-202, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided above, the department proposes to amend ARM 42.20.640 because the rule pertains specifically to the classification of land 160 acres or larger in size. The department proposes striking the words "valuation" and "ownership" from the catchphrase because the rule pertains to classification, not valuation, and 'ownership' is superfluous and potentially confusing because ownership is a factor in classification but not in a specified manner conveyed in the current catchphrase.

The department proposes striking the text regarding covenants and other restrictions in (1) and inserting a cross-reference to ARM 42.20.156 to lessen redundancy.

The department proposes striking (2), (3), and (4) as the content is provided in ARM 42.20.156 and is redundant. The cross-reference to ARM 42.20.710 in (2) was not proposed for transfer to ARM 42.20.156 as the rule is currently proposed for repeal in MAR Notice No. 42-1021, which is pending as of the publication of this notice.

42.20.655 CLASSIFICATION AND VALUATION OF ONE-ACRE OF LAND BENEATH RESIDENCES IMPROVEMENTS LOCATED ON AGRICULTURAL LAND AND NONQUALIFIED AGRICULTURAL LAND ~~(1) An agricultural valuation will be made for each one-acre area beneath each residence(s) located on agricultural land as defined in ARM 42.20.660, 42.20.665, 42.20.670, 42.20.675, and 42.20.680.~~

~~(a) Occupancy of the residential improvement for the purpose of applying this rule shall be irrelevant.~~

~~(b) A single one-acre agricultural land value determination will be made when multiple residences are located on the same one-acre area.~~

~~(c) Each one-acre area beneath the residence(s) on agricultural land as stated in (1) shall be appraised according to the highest productivity value of agricultural land.~~

~~(d) To avoid double taxation, the productive capacity value for the one acre beneath the residence(s) on agricultural land must be subtracted from the productivity value for the entire property ownership.~~

(1) Each one-acre of land beneath any residences located on agricultural land is classified as agricultural land and valued according to the highest productivity value of agricultural land, in accordance with 15-7-206, MCA.

(2) A market value determination will be made for each Each one-acre area of land beneath ~~each any~~ residence(s)s which is located on nonqualified agricultural land is classified as class four land and valued according to the market value of comparable land.

~~(a) Occupancy of the residential improvement for the purpose of applying this rule shall be irrelevant.~~

~~(b) A single one-acre market value determination will be made when multiple residences are located on the same one-acre area.~~

~~(c) Each one-acre area beneath a residential improvement on nonqualified agricultural land as defined in (2) shall be appraised according to market value consistent with that of comparable land.~~

~~(d) (a) If the one acre of land is located on a nonqualified agricultural parcel of land that is many miles from a suburban area, the market value assigned to the one-acre area land will be consistent with the market value of comparable land. In no case will the market value be lower than the lowest market value assigned to improved tracts within the county.~~

~~(e) (b) If the one acre of land is located on a nonqualified agricultural parcel of land that is near a suburban area, the market value assigned to the one-acre area land will be consistent with the market value of surrounding suburban land.~~

~~(f) To avoid double taxation, the statewide average productivity value of the grazing land for the one acre beneath the residence(s) on nonqualified agricultural land improvements must be subtracted from the productivity value for the entire property ownership.~~

~~(3) No specific site improvement values for water systems and septic systems will be added to the one-acre land values determined in (2)(d) and (e).~~

AUTH: 15-1-201, MCA

IMP: 15-6-134, 15-7-103, 15-7-201, 15-7-202, 15-8-111, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided above, the department proposes amending ARM 42.20.655 and revising the catchphrase by removing "improvements" and adding "residences" and "located" as the rule content pertains to the classification and valuation of one acre of land beneath residences located on agricultural land and nonqualified agricultural land.

The department proposes striking current (1) and revising content in proposed (1) for improved organization, to lessen redundancy, and to include a statutory cross-reference regarding the valuation of one-acre of land beneath a residence located on agricultural land. The cross-references to ARM 42.20.660, 42.20.665, and 42.20.680 in current (1) are obsolete as the rules were repealed on February 1, 2020; the cross-reference to ARM 42.20.675 is proposed to be stricken as the rule pertains to the valuation of irrigated land.

The department also proposes striking the text in (1)(a) and (2)(a) because "residence" is a defined term in the subchapter regardless of occupancy. The

department proposes striking (1)(d) and (2)(f) because the content is obsolete as it reflects an old process in the manual determination of the one acre applicable to the residence(s) present on the agricultural land. The department classifies all property according to its use and does not calculate two values for the same one-acre of land.

The department proposes consolidating the text in (2) to improve understanding of the subject matter.

Current (3) text was not kept or transferred to another rule because it became obsolete based on amendments to 15-7-103(7), MCA, made by the 2015 Montana Legislature under Senate Bill 157.

#### 42.20.675 IRRIGATED AGRICULTURAL FARM LAND VALUATION

(1) remains the same.

(2) The department calculates net income per acre (I) by:

(a) and (b) remain the same.

(c) subtracting the \$50.00 allowable water costs per acre of irrigated farm land from the value determined in (2)(b). ~~The department calculates allowable water costs as provided in 15-7-201, MCA, and the department's Montana Agricultural Land Classification and Valuation Manual, adopted and incorporated by reference in ARM 42.18.121.~~

(3) and (4) remain the same.

~~(5) If the land owner fails to provide their energy costs to the department, as required by 15-7-201, MCA, the department will calculate the irrigated farm land productivity value without an energy cost deduction.~~

~~(6) The department may gather energy cost data and conduct property field reviews and energy cost audits.~~

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: As stated in the general statement of reasonable necessity, the department proposes to amend ARM 42.20.675 which is necessary to implement the irrigated farm land allowable water costs changes to 15-7-201, MCA, under HB 24. The allowable water costs for irrigated farm land are no longer calculated and are now set at a uniform amount of \$50.00. The department proposes to amend (1)(c) to include the stated water costs and remove water costs calculations and Montana Agricultural Land Classification and Valuation Manual references because they are now unnecessary.

The department proposes striking (5) and (6) because the energy component of water costs in 15-7-201, MCA, was also eliminated by HB 24.

#### 42.20.681 AGRICULTURAL COMMODITY PRICES AND VALUES

(1) Commodity prices for the ~~2019-2020~~ 2021-2022 appraisal cycle used for the determination of income are calculated using a 10-year Olympic average of prices from Montana Agricultural Statistics for the years ~~2008-2017~~ 2010-2019. The department's Olympic average removes the highest price and the lowest price and averages the remaining eight prices. The commodity prices used for valuing

agricultural land for the ~~2019-2020~~ 2021-2022 appraisal cycle are as follows:

(a) Spring wheat price used in the valuation of non-irrigated summer fallow and non-irrigated continuous cropped farm lands is ~~\$6.50~~ \$6.16 per bushel.

(b) Alfalfa hay price, reduced by 20 percent as required by 15-7-201, MCA, used in the valuation of irrigated and non-irrigated hay lands is ~~\$98.20~~ \$105.80 per ton.

(c) Private grazing fees used in the valuation of grazing lands is ~~\$20.93~~ \$22.49 per Animal Unit Month (AUM).

(2) The minimum value of irrigated land as determined by the methodology detailed in ARM 42.20.675 is ~~\$583.98~~ \$552.99 per acre.

(3) remains the same.

(4) For the ~~2019-2020~~ 2021-2022 appraisal cycle the capitalization rate for Class 3 agricultural land, which is used to convert an ongoing income stream into an estimate of value is 6.4 percent.

(5) For the ~~2019-2020~~ 2021-2022 appraisal cycle the highest productivity of non-irrigated continuously cropped farmland is 60 bushels per acre, and is used in calculating the values of specialty crop land.

(6) For the ~~2019-2020~~ 2021-2022 appraisal cycle, the value of the one acre beneath a residence on agricultural land is ~~\$2,144~~ \$1,866.

(7) For the ~~2019-2020~~ 2021-2022 appraisal cycle, the minimum carrying capacity for grazing land to be eligible for agricultural classification is ~~34~~ 23 AUMs as determined by the Montana State University - Bozeman, College of Agriculture, Department of Agricultural Economics and Economics, in accordance with ARM 42.20.620.

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-7-201, 15-7-202, 15-7-206, 15-7-210, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes amending 42.20.681 to update the years, prices, and values for the upcoming reappraisal cycle that begins January 1, 2021.

The department proposes amending (1)(a) through (c) to update the rule with the current commodity price and production data for the base period obtained from the Montana Agricultural Statistics which is used for valuing agricultural lands in the upcoming reappraisal cycle. The department's use of the Montana Agricultural Statistics as its data source is required by 15-7-201, MCA.

42.20.682 FAMILY FARM REQUIREMENTS FOR AGRICULTURAL LAND CLASSIFICATION (1) Parcels of land between 20 acres and 160 acres that do not meet the agricultural land classification income requirements ~~for agricultural eligibility~~ as outlined in 15-7-202, MCA, and ARM 42.20.620 but ~~which~~ are used for farming or ranching, or as a part of a family farm or ranch business as described in 15-7-202, MCA, may be valued as agricultural land if the following requirements are met: ~~taxpayer provides sufficient evidence, as described in this rule, to prove the property is part of a family farm or ranch business.~~



~~(2) The following proof of eligibility requirements will be considered when the owner of the land applies for agricultural land classification:~~

~~(a) the subject property must be located within 15 air miles of the family-operated farm or ranch;~~

~~(b) the property owner of the subject property must submit proof that 51 percent or more of the owner's Montana annual gross income is derived from agricultural production;~~

~~(c) remains the same.~~

~~(d) the property owner of the property must submit documentation proving that at least 51 percent of the farm or ranch entity's Montana annual gross income is derived from agricultural production.~~

~~(3) (2) If the conditions requirements of (2) (1) are satisfied, the land is eligible for agricultural land classification.~~

~~(4) (3) The department will accept a copy of a cancelled check as proof of payment of documentation that property taxes were paid by the family-operated business entity. Other acceptable proof of payments of the property taxes documentation will be considered on a case-by-case basis.~~

~~(5) (4) If the property owner of the subject property, which does not meet the requirements to be classified and valued as agricultural land, is a shareholder, partner, owner, or member of the family-operated farming or ranching entity involved in Montana agricultural production, the property owner they may qualify the subject property as agricultural land if proof the following documentation is submitted that details the legal relationship between the owner and the family-operated farming or ranching business entity. This proof must include:~~

~~(a) a copy of the documents documentation that establishes a legal relationship with the family-operated farming or ranching business entity, such as the documents on file with the Montana Secretary of State; and~~

~~(b) proof documentation that indicates at least 51 percent of the property owner's or family-operated farming or ranching business entity's Montana annual gross income comes from agricultural production.~~

~~(6) (5) If the conditions requirements of this rule are satisfied, the land is eligible for classification as agricultural land according to its use.~~

~~(7) (6) For all agricultural land classification applications received under this rule, the acceptable proof of income documentation will be the most recent year's Montana individual and/or corporate tax return, whichever is appropriate. The forms presented as proof must include all All state and federal income tax forms submitted must that detail the amount of income received from agricultural production as well as the amount of Montana gross income.~~

~~(8) A current county farm and ranch reporting form that reflects any livestock or personal property used on the land must have been filed by the current landowner with the local department office.~~

(7) If a property owner owns personal property related to the family farm or ranch business, and the market value of the personal property is above the threshold provided in 15-6-138, MCA, then the property owner must submit to the department each year a completed personal property reporting form in accordance with the requirements provided in 15-8-301, MCA, and ARM 42.21.158.

AUTH: 15-1-201, MCA

IMP: 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes amending ARM 42.20.682 for subchapter consistency and to improve the public's understanding of the subject matter. The department proposes revising the catchphrase to better reflect the rule content. The department proposes revising (1) by inserting a cross-reference to ARM 42.20.620 to further describe the agricultural land classification income requirements.

The department proposes striking (8) as the text is obsolete. In proposed (7), the department proposes inserting the existing requirement that property owners submit a personal property reporting form to the department each year they own personal property (business equipment) with a market value above the \$100,000 threshold, pursuant to 15-6-138, MCA. The department also included the cross reference to the personal property reporting requirements found in ARM 42.21.158 for necessary attribution of authority. The word "livestock" was not included in proposed (7) text because livestock has not been reported to the department for per capita fees on the personal property reporting form since 2015.

5. The department proposes to repeal the following rules:

42.20.606 EXCEPTIONS TO AGRICULTURAL LAND ASSESSMENT

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-6-134, 15-7-201, 15-7-202, 15-44-101, 15-44-102, 15-44-103, MCA

42.20.615 APPLICATION FOR AGRICULTURAL CLASSIFICATION OF LAND

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-7-202, MCA

42.20.630 PRODUCTION FAILURES

AUTH: 15-1-201, MCA

IMP: 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

42.20.635 MARKETING DELAY FOR ECONOMIC ADVANTAGE

AUTH: 15-1-201, MCA

IMP: 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [todd.olson@mt.gov](mailto:todd.olson@mt.gov) and must be received no later than 5:00 p.m., October 2, 2020.

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

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 6 above or faxed to the office at (406) 444-3696 or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

10. The bill sponsor contact requirements of 2-4-302, MCA, do apply with respect to the department's implementation of HB 24 (2019) and its amendments to ARM 42.20.675. The department contacted the bill sponsor via email on August 3, 2020.

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

/s/ Todd Olson

Todd Olson  
Rule Reviewer

/s/ Gene Walborn

Gene Walborn  
Director of Revenue

Certified to the Secretary of State August 18, 2020.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 2.43.3501 and 2.43.5101	)	
pertaining to the adoption by	)	
reference of the State of Montana	)	
Public Employee Defined	)	
Contribution Plan Document and the	)	
State of Montana Public Employee	)	
Deferred Compensation (457) Plan	)	
Document	)	

TO: All Concerned Persons

1. On June 26, 2020, the Public Employees' Retirement Board published MAR Notice No. 2-43-601 pertaining to the proposed amendment of the above-stated rules at page 1035 of the 2020 Montana Administrative Register, Issue Number 12.

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  
Board President  
Public Employees' Retirement Board

Certified to the Secretary of State August 18, 2020.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 2.59.1743 and 2.59.1753 )  
pertaining to report due dates for )  
mortgage servicers and when initial )  
mortgage license applications are )  
deemed abandoned )

TO: All Concerned Persons

1. On July 10, 2020, the Department of Administration published MAR Notice No. 2-59-602 pertaining to the proposed amendment of the above-stated rules at page 1247 of the 2020 Montana Administrative Register, Issue Number 13.

2. No comments were received.

3. The department has amended ARM 2.59.1743 and 2.59.1753 exactly as proposed.

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

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

Certified to the Secretary of State August 18, 2020.

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

In the matter of the adoption of an                    ) NOTICE OF ADOPTION OF AN  
emergency rule closing Bird Island on            ) EMERGENCY RULE  
Flathead Lake in Lake County                    )

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing Bird Island on Flathead Lake:

- (a) A wildfire is burning on Bird Island.
- (b) Persons recreating on Bird Island would be subjected to erratic and unpredictable fire conditions posing a danger of:
  - (i) becoming surrounded and trapped by the fire;
  - (ii) being hit by hazard trees;
  - (iii) becoming a potential burden to rescue and fire crews; or
  - (iv) death.
- (c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 16 of the 2020 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 11, 2020, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

3. The emergency rule is effective August 4, 2020, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I BIRD ISLAND EMERGENCY CLOSURE (1) Bird Island is a Wildlife Habitat Protection Area and is located on Flathead Lake in Lake County.  
(2) Bird Island is closed to all public occupation and recreation.  
(3) This rule will expire as soon as the department determines that Bird Island is again safe for occupation and recreation. This will depend on the extent and duration of the fire in the area. Signs restricting use of Bird Island will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA

IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail kgangstad@mt.gov. Any comments must be received no later than September 25, 2020.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Martha Williams

Martha Williams

Director

Department of Fish, Wildlife and Parks

/s/ Zach Zipfel

Zach Zipfel

Rule Reviewer

Certified to the Secretary of State August 4, 2020.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION
Rule I pertaining to natural and	)	
nonanthropogenic water quality	)	(WATER QUALITY)
standards	)	

TO: All Concerned Persons

1. On April 30, 2020, the Board of Environmental Review (board) published MAR Notice No. 17-412, pertaining to the public hearing on the proposed adoption of the above-stated rule at page 765 of the 2020 Montana Administrative Register, Issue No. 8.

2. The board has adopted NEW RULE I (ARM 17.30.618) exactly as proposed.

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

COMMENT NO. 1: We appreciate and thank the department for its extensive work gathering data, modeling, carrying out research, meeting with stakeholders, and drafting complicated technical documents that have led to this rulemaking.

RESPONSE: The board and department thank you for the comment.

COMMENT NO. 2: Since this is the first nonanthropogenic based standard rulemaking, it is important to get the rule correct so that it protects beneficial uses and provides for reasonable and effective implementation.

RESPONSE: The board agrees with the comment.

COMMENT NO. 3: I do not understand why it is in the public interest to allow polluters to add arsenic to the Yellowstone River at above 10 µg/L even if 75-5-222(1), MCA, says it is allowable.

RESPONSE: The board, as well as the department, must follow the requirements of 75-5-222(1), MCA. The department has collected considerable data to establish the nonanthropogenic condition of total recoverable arsenic within the identified segments of the Yellowstone River. When formulating and adopting standards of water quality, the board must also consider the economics of waste treatment and prevention under 75-5-301(2), MCA. Requiring water that will be discharged to the river to be treated to 10 µg/L arsenic when the river's nonanthropogenic condition has been established at higher concentrations incurs an unnecessary economic burden on dischargers. The legislature directed the board and the department to ensure that water quality standards are applied at the nonanthropogenic condition of a water body.

COMMENT NO. 4: The most protective arsenic standards for human health



and the environment for each segment of the Yellowstone River should be adopted, regardless of economic investment by MPDES permittees to meet such standards.

RESPONSE: See response NO. 3.

COMMENT NO. 5: We support the explicit prohibition of mixing zones and intake credits as there is no assimilative capacity for nonanthropogenic standards and we support permittees being required to meet end-of-pipe nonanthropogenic standards.

RESPONSE: The board agrees with the comment. See responses NO. 6 and NO. 7.

COMMENT NO. 6: Given the unique issues that arise from naturally occurring pollutants, it would be appropriate to include a provision that allows for consideration of intake credits when implementing the standard. Recognizing that there may not be a practical way to ensure the standard and the natural condition are equal all the time, and that sometimes the standard will be more stringent than the natural condition, including a provision for intake credits provides another tool that may be used to ensure compliance with the Montana Water Quality Act.

RESPONSE: The board disagrees with the comment. With NEW RULE I, the board is directly addressing the naturally occurring pollutant (arsenic) in the Yellowstone River by establishing new standards at concentrations greater than the current standard. By using annual median nonanthropogenic arsenic levels in the Yellowstone River, the proposed standards already give dischargers credit for naturally occurring concentrations which are above the current standard. As a result, any need for a water quality standards-based intake credit is precluded by the nonanthropogenic standard itself. Even if the board were to adopt a water quality standards-based intake credit rule, as other states have done, such a tool could not be used to provide intake credit where nonanthropogenic standards already apply.

The board also recognizes the river's concentrations will vary from year to year. However, variability is already accounted for within the new standards. While approximately half the years will have somewhat higher arsenic concentrations than the new standards, the other half will have somewhat lower concentrations. Allowing intake credits only for the "high arsenic years" while not also requiring treatment to better than the standard during the "low arsenic years" will lead to increase in the river's arsenic concentration over the long-term.

COMMENT NO. 7: The board should consider adding provisions to the rule that provide access to current and appropriate regulatory tools that specifically provide for consideration of dilution and mixing zones, or at a minimum ensure the rule is silent on those provisions so the more appropriate governing portions of the federal Clean Water Act and the Montana Water Quality Act may continue to govern without conflict. Including reference to mixing zones in this new rule is unnecessary and may lead to unforeseen consequences and conflicts.

RESPONSE: The board considered the request and concludes that the rule should address mixing zones as currently proposed in (3) of NEW RULE I. Mixing zones are only appropriate when the background condition of the receiving water is below the applicable water quality standard. Here, the nonanthropogenic standards

are established right at the long-term median nonanthropogenic condition of a waterbody; that is, at the central tendency of the naturally occurring pollutant. The board believes that a measure of central tendency (in this case the median nonanthropogenic concentration) is the best representation of the nonanthropogenic condition. Any anthropogenic increase in the concentration of such a waterbody would move the nonanthropogenic condition away from its central tendency and away from the nonanthropogenic condition. As a result, there is no assimilative capacity with nonanthropogenic standards and mixing zones are not appropriate.

COMMENT NO. 8: The board should consider adding provisions to the rule that provide access to current and appropriate regulatory tools that allow implementation of the standards either as a load or as a concentration.

RESPONSE: The board disagrees with the comment. The standards have been developed as concentrations and any MPDES permit limits will be expressed as concentrations to ensure the discharge is meeting the standard. This is consistent with the large number of concentration-based water quality standards that have been adopted by the board.

COMMENT NO. 9: If the arsenic standard becomes artificially low during a "high arsenic concentration" year, a permittee is at risk of permit violations, enforcement actions, and perhaps a citizen suit under the federal Clean Water Act. The rule and/or technical support documents should clarify that such a situation is not a violation of the permit limits.

RESPONSE: Permittees will be required, under NEW RULE I, to treat their discharge effluent to the nonanthropogenic standard concentration, unless a permittee's discharge will not cause or contribute to an exceedance of the standard. Adoption of the proposed arsenic standards increases allowable concentrations to levels above the currently applicable standard of 10 µg/l, thereby lessening the burden of compliance. While variability is already accounted for within the new standards, the standards may be revised should median nonanthropogenic concentrations change significantly.

COMMENT NO. 10: If the nonanthropogenic condition of the river trends upward over time and results in a higher standard, it should be clear in the rule or the supporting technical documents that the permit limit may be increased in accordance with the higher nonanthropogenic level without risking an anti-backsliding claim.

RESPONSE: The anti-backsliding provisions of state and federal law prohibit the renewal, reissuance, or modification of an existing permit to contain effluent limitations less stringent than those established in a previous permit, unless an exception applies. In general, revised standards do not justify the application of a less stringent effluent limitation. See 40 C.F.R. § 122.44(l). Anti-backsliding requirements are applied on a case-by-case basis through the MPDES permitting process and are outside the scope of this rulemaking.

COMMENT NO. 11: The department should, in the proposed rule, provide a categorical exemption stating that "point source dischargers who discharge water

utilized for non-contact cooling purposes only into the same segment of the river from where the water was withdrawn are exempt from the proposed water quality standards limitations."

RESPONSE: The purpose of this rule is to adopt water quality standards based upon natural and nonanthropogenic conditions and, specifically, the establishment of total recoverable arsenic standards for four segments of the Yellowstone River. The board disagrees this is the appropriate rule for such an exemption and finds the request to be outside the scope of this rulemaking.

COMMENT NO. 12: The board should consider removing or modifying footnote 16 of Department Circular DEQ-7. Currently, the footnote indicates no sample shall exceed the human health standard.

RESPONSE: Thank you for your comment. However, it is outside the scope of this rulemaking.

COMMENT NO. 13: Are there any public water systems in the segments of the Yellowstone River with proposed site-specific arsenic criteria that have data demonstrating that the river source water with arsenic of 60 µg/L can be treated to below 10 µg arsenic per liter?

RESPONSE: The comment refers to the highest anticipated instream arsenic concentration (60 µg/L arsenic) which was estimated using the department's modeling for the Yellowstone River from the Montana/Wyoming border (44.9925, -110.5172) to the mouth of Mill Creek (45.4165, -110.6548). The standard being proposed for the segment is 28 µg/L. Currently, there are no public water supply systems on that segment of the river; the town of Gardiner, which is located on the segment, stopped using the river as a water source over ten years ago and now only uses water sourced from wells. The other public water supply on a segment with proposed new arsenic standards is in the city of Laurel, which draws water from the Yellowstone River in the segment from the mouth of the Stillwater River (45.6399, -109.2829) to the mouth of the Clarks Fork of the Yellowstone River (45.6510, -108.7145). The proposed arsenic standard in this segment is 13 µg/L. The department examined the arsenic concentrations in Laurel's finished drinking water and the corresponding concentrations in the river when the water was withdrawn, using methods identical to those used for Billings and described in Section 2.1 of its 2020 technical document *Addendum to Derivation of the Nonanthropogenic Standards for Segments of the Upper and Middle Yellowstone River*. Over the time period data was available (2009-2018), the department found that the Yellowstone River's arsenic ranged from 10 to 19 µg/L, and Laurel's drinking water complied with the arsenic standard (10 µg/L) on all but one occasion—when it measured 11 µg/L. Importantly, the exceedance did not occur when the river's arsenic was particularly high (it was 13 µg/L at the time) and is unrelated to the time periods when the river's arsenic ran highest. These findings indicate that the Laurel public water supply—the only system actively drawing water from the Yellowstone River in the segments addressed by NEW RULE I—can treat arsenic to ≤ 10 µg arsenic per liter when the river's arsenic concentration is as high as 19 µg/L.

COMMENT NO. 14: NEW RULE I states that the site-specific arsenic criteria

are "Water quality standards for human health." Please provide information to explain how the criteria will protect human health from exposure to arsenic through fish consumption.

RESPONSE: The United States Environmental Protection Agency (EPA) provides two equations to calculate an arsenic concentration standard protective of human health; one equation assumes the waterbody is used for drinking and that a drinking water treatment process will not further lower the contaminant concentration, and also that fish are eaten from the same waterbody. The other equation assumes that the only route of exposure is via consumption of fish from the waterbody. The latter equation (referred to as "organism-only") can be used to determine a protective arsenic concentration for fish consumption, and that result can then be compared to the nonanthropogenic arsenic standards being proposed for the Yellowstone River. Key assumptions adopted in Department Circular DEQ-7 (June 2019 version) are as follows: an average human body weight of 80 kg, fish consumption of 0.022 kg/day, and an arsenic bioconcentration factor of 44. Using these assumptions, the organism-only equation indicates 47 µg arsenic per liter would be protective for fish consumption (at Montana's arsenic carcinogen risk factor of  $10^{-3}$ , per 75-5-301(2)(a), MCA). The highest nonanthropogenic arsenic standard being proposed on the Yellowstone River is 28 µg arsenic per liter, lower than 47 µg arsenic per liter. The board notes that river water is used for drinking within the affected Yellowstone River segments (Laurel has a public water supply), but arsenic in the river's water is first treated to  $\leq 10$  µg/L before distribution. Thus, the board concludes the proposed Yellowstone River nonanthropogenic standards will protect human health from exposure to arsenic through fish consumption.

COMMENT NO. 15: If an anthropogenic source introduces water with a concentration at or below 28 µg/L, the concentration in the river does not increase, but the total mass of arsenic in the river does increase.

RESPONSE: The board agrees with the comment. Any additional mass of arsenic added to the river from a water source which did not originate from the river itself will increase the river's total load.

COMMENT NO. 16: Under the proposed rule, simple water evaporation (of Yellowstone River water) due to ambient temperatures would increase the non-impacted arsenic load to an arsenic concentration higher than what was diverted from the river. The user of the water would then be forced to treat the water to remove nonanthropogenic arsenic before discharge.

RESPONSE: In the scenario provided, the user is not simply using and then returning Yellowstone River water in its original state; the user's actions have resulted in the return water having a higher concentration than when it was initially diverted. When returned to the river, the higher arsenic concentration of the returned water will increase the river's arsenic concentration. The standards are written to concentration; therefore, the end result of the commenter's scenario is no different than if the user had mixed water with elevated anthropogenic arsenic from some other source with the withdrawn Yellowstone River water, and then returned all the water to the river. Either way, the river's concentration has increased due to anthropogenic actions. Therefore, treatment to the non-anthropogenic standard is

appropriate.

COMMENT NO. 17: The department should allow an option to implement procedures/criteria utilizing a 12-month rolling average, calculated monthly, in order to comply with the nonanthropogenic condition present in the waterbody at all times of the year.

RESPONSE: The board disagrees with the comment. The board understands that the request represents a potential way for a permittee to remain in compliance with a nonanthropogenic standard by accounting for near-term natural variability which temporarily increases the river's concentration above the nonanthropogenic standard. However, the department analyzed this approach using its modeled arsenic data and permittee arsenic discharge data, and found that it does not resolve the compliance concern at hand. For arsenic in the Yellowstone River, the department found that a rolling 12-month median is basically the same as other retrospective data compilations; it uses historic data to predict the present. The department found that the median or average arsenic concentration of the preceding 12 months may have little or no predictive relationship with the current month. And since permit compliance is based on meeting the current month's limits, if the current month happens to be high (i.e., is naturally elevated above the nonanthropogenic standard) comparing the current month to the previous 12-month rolling value may still indicate the permittee's discharge is above the standard.

COMMENT NO. 18: The language in the reason section of the MAR Notice No. 17-412 sets the tone for future rulemaking and should clarify what reasons apply to the Yellowstone River for arsenic but may not apply elsewhere or for other parameters. Therefore, revisions should be made to the MAR notice. The last sentence on page 766, which carried to page 767, should be revised for the final notice, as follows: "The proposed nonanthropogenic arsenic standards for the Yellowstone River are protective of human health, which is the beneficial use in the Yellowstone River that is most sensitive to arsenic levels."

RESPONSE: The board disagrees with the comment. Future rulemakings must contain reasonable necessity statements supporting related rules. Here, the proposed nonanthropogenic arsenic standards for the Yellowstone River are protective of human health when the river's water is conventionally treated for drinking water purposes. The human health drinking water use in the Yellowstone River is the most sensitive to nonanthropogenic arsenic levels.

COMMENT NO. 19: Revisions should be made to MAR Notice No. 17-412. The first full sentence on page 767 should be revised for the final notice, as follows: "Because the proposed standards reflect the nonanthropogenic condition of the Yellowstone River, they protect beneficial uses, comply with Water Quality Act, and enable regulation of point source discharges."

RESPONSE: The board disagrees any revisions to the MAR notice are necessary. The proposed standards do not enable regulation of point source dischargers; such authority is provided by the Water Quality Act, Title 75, chapter 5, MCA, and the related permitting rules. See also response NO. 18.

COMMENT NO. 20: Section (3) of the rule, as well as the last paragraph in the reason section of MAR Notice No. 17-412, precludes the possibility of assimilative capacity for the applicable nonanthropogenic or natural standards, and denies mixing zones. Section (3) of the proposed rule should be removed.

RESPONSE: The board disagrees that (3) of the proposed rule should be removed. See also response NO. 7.

COMMENT NO. 21: If (3) is not removed, it should be modified to have appropriate sideboards placed on it. More appropriate language would be as follows: "In accordance with 40 CFR 122.44(d)(1)(iii) and Title 17, chapter 30, subchapter 5 of these regulations, dilution and mixing zones may be considered for discharges to the waterbodies and for the parameters listed in this rule; however, for toxic and carcinogenic parameters, dilution and mixing zones may only be considered for discharges with an average flow of less than 1 percent of the 7Q10 low flow of the waterbody and an annual load of less than 1 percent of the annual average of the load of the parameter."

RESPONSE: The board disagrees with the comment. See also responses NO. 7 and NO. 20.

COMMENT NO. 22: Including the term "assimilative capacity" in (3) of the rule injects a new term into the rules, is unnecessary, and may lead to unforeseen consequences. Based on current regulatory and statutory language, the department already has the ability to determine when loading (or assimilative) capacity exists, which makes (3) of the rule unnecessary and confusing.

RESPONSE: The board disagrees with the comment. In (3) of the proposed rule, the term "assimilative capacity" provides context as to why mixing zones are not allowed for nonanthropogenic standards. Assimilative capacity is a fundamental requirement for the implementation of water quality standards and any related mixing zone or dilution consideration. See also response NO. 7.

COMMENT NO. 23: Discussion of permitting should be deleted from the technical support document, specifically Section 4.2 of the document *Derivation of the Nonanthropogenic Arsenic Standards for Segments of the Upper and Middle Yellowstone River*.

RESPONSE: The board disagrees with the comment. The guidance document was developed cooperatively between the department's Standards & Modeling and Permitting sections, and released as final in late 2019. As a final technical document, it provides the department's non-binding recommendations for how to implement nonanthropogenic standards.

COMMENT NO. 24: We would like to have the inclusion of intake credits to prevent the need for further investment and operation costs where in the end we are really not going to have any kind of measurable impact on the river.

RESPONSE: The board disagrees with the comment. Please see response NO. 6.

COMMENT NO. 25: To enable an intake credit provision, the following text

should be added either to proposed NEW RULE I or to the supporting technical documents: "The standards provided herein may be implemented as annual average standards, either in terms of load or concentration; intake credits may be considered for permittees that take surface water directly from, and/or groundwater that originates or is influenced by, the same waterbody to which the effluent discharges."

RESPONSE: The board disagrees with the comment. Please see also responses NO. 6 and NO. 8. The board is aware that interactions between surface waterbodies and adjacent groundwater occur, however they are not the same waterbodies and it is common for them to have drastically different water quality. The nonanthropogenic standards in NEW RULE I apply to the Yellowstone River and groundwater standards are outside the scope of this rulemaking.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes  
EDWARD HAYES  
Rule Reviewer

BY: /s/ Christine Deveny  
CHRISTINE DEVENY  
Chair

Certified to the Secretary of State August 18, 2020.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 18.8.101, 18.8.426, 18.8.508, ) REPEAL  
18.8.509, 18.8.510A, 18.8.510B, )  
18.8.511A, 18.8.511B, 18.8.602, and )  
18.8.901 and the repeal of ARM )  
18.8.902 and 18.8.1101 pertaining to )  
Motor Carrier Services )

TO: All Concerned Persons

1. On July 10, 2020, the Department of Transportation published MAR Notice No. 18-182 pertaining to the proposed amendment and repeal of the above-stated rules at page 1251 of the 2020 Montana Administrative Register, Issue Number 13.

2. The department has amended ARM 18.8.101, 18.8.426, 18.8.508, 18.8.509, 18.8.510A, 18.8.511B, 18.8.602 and 18.8.901 as proposed.

3. The department has repealed ARM 18.8.902 and 18.8.1101 as proposed.

4. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

18.8.510B OVERSIZE LOAD SIGNS (1) and (1)(a) remain as proposed.

(b) On the power unit, flashing amber lights, a minimum of five inches in diameter, 50 candlepower, 60 to 90 flashes per minute, shall be mounted at each end of the oversize load sign and visible 360 degrees. A single revolving light or strobe light may be substituted for flashing lights. Lights shall be flashing at all times when moving an oversize vehicle or load.

(2) through (4) remain as proposed.

AUTH: 61-10-155, MCA

IMP: 61-10-121, 61-10-122, MCA

18.8.511A WHEN PILOT VEHICLES ARE REQUIRED (1) through (6) remain as proposed.

(7) When movement requires pilot vehicles, the permittee must not delay traffic in excess of 15 minutes.

AUTH: 61-10-155, MCA

IMP: 61-10-102, 61-10-121, 61-10-122, 61-10-123, 61-10-124, MCA

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



COMMENT #1:

One comment was received stating ARM 18.8.510B(1)(b) second sentence should add the word "single" between "A" and "revolving," i.e., "A single revolving light or strobe light may be substituted for flashing lights."

RESPONSE #1:

MDT agrees the suggested wording would add clarity for officers and permittees that only one single light is required. The suggested wording will avoid future questions about the number of revolving or strobe lights which are required. MDT will amend ARM 18.8.510B as shown above.

COMMENT #2:

One comment was received stating language already found in ARM 18.8.509(8)(e) stating "when movement requires pilot vehicles, the permittee must not delay traffic in excess of 15 minutes" should also be repeated in ARM 18.8.511A.

RESPONSE #2:

MDT agrees the suggested wording would add clarity to ARM 18.8.511A, When Pilot Vehicles Are Required, and make it easier for both officers and permittees to find and use the 15-minute delay language. MDT will amend ARM 18.8.511A as shown above.

COMMENT #3:

One comment was received stating ARM 18.8.510B(1)(b) should add the words "for vehicles exceeding 10 feet in width" for clarification.

RESPONSE #3:

MDT does not agree with the comment because (1) already includes the phrase "Vehicles exceeding 10 feet in width must:" to apply to both (a) and (b) below. Addition of the phrase in (1)(b) would be redundant and is not therefore necessary.

/s/ Carol Grell Morris

Carol Grell Morris  
Rule Reviewer

/s/ Michael T. Tooley

Michael T. Tooley  
Director  
Department of Transportation

Certified to the Secretary of State August 18, 2020.

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

In the matter of the adoption of New       ) NOTICE OF ADOPTION  
Rule I pertaining to unemployment       )  
insurance benefits related to the       )  
COVID-19 pandemic                        )

TO: All Concerned Persons

1. On July 10, 2020, the Department of Labor and Industry (department) published MAR Notice No. 24-11-360 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1264 of the 2020 Montana Administrative Register, Issue Number 13.

2. The department held a public hearing in Helena on July 31, 2020, over the Zoom videoconference and telephonic platform at which no members of the public commented. Written comments were received during the public comment period.

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

COMMENT 1: A commenter stated that it favored proposed NEW RULE I, and suggested modifications to the rule as noted below.

RESPONSE 1: The department acknowledges the comment.

COMMENT 2: A commenter suggested that pursuant to the provisions of the Coronavirus Aid, Relief and Economic Security Act (CARES Act), the department should continue to waive the one week waiting period for claims, in order to blunt the economic hardship suffered by a claimant who is unemployed as a result of the COVID-19 pandemic.

RESPONSE 2: Because Section 2105 of the CARES Act provides for full federal funding of benefits paid by a state that waives the waiting week, and that waiver of the waiting week furthers the public policy of minimizing the economic insecurity caused by involuntary unemployment expressed by 39-51-102, MCA, the department agrees that it is appropriate to continue to waive the waiting week. If the waiting week waiver provision of the CARES Act, set to expire at the end of December 2020, has not been replaced or supplemented by subsequent similar federal legislation, and the COVID-19 pandemic emergency has not ended, the department will timely amend NEW RULE I to remove the waiting week waiver. The department amends NEW RULE I accordingly, as showing in paragraph 4 below.

COMMENT 3: A commenter suggested that, in the way that work search requirements were modified while temporary emergency unemployment insurance rules were in place, the regular work search be waived or otherwise deemed

satisfied without requiring Montanans to interact in person with potential employers. The commenter stated that many low-wage jobs do not offer online recruiting, and that because of the recent record increases in COVID-19 infections, in-person work searches jeopardize the health and safety of Montana workers and employers.

RESPONSE 3: The department acknowledges that since the time NEW RULE I was drafted and filed with the Secretary of State's office, Montana has experienced a significant increase in daily new case counts and case distribution in COVID-19 infections, hospitalizations, and deaths. The effect of the pandemic on public health and safety is persistent and ongoing. Further, previous to the emergency, there were, on average, three to four job openings per individual on unemployment insurance. At this time, that ratio has reversed and there are roughly three to four individuals on unemployment for every job opening. The department agrees that as a means of protecting the public health, safety, and welfare during the COVID-19 pandemic, work search requirements should be temporarily excused so as to minimize the risk of transmission between claimants, employers, and other persons in a workplace. At the same time, the department wishes to emphasize that under the terms of Montana's unemployment insurance laws, a claimant cannot refuse suitable work that can be performed in a manner consistent with the Governor's declarations and directives. The department amends NEW RULE I accordingly, as showing in paragraph 4 below.

COMMENT 4: A commenter suggested that the department amend NEW RULE I to provide for a waiver of charges for benefits paid with respect to weeks of unemployment that begin on or after July 12, 2020.

RESPONSE 4: The unemployment insurance system is designed to be supported by employer contributions (payroll taxes). In the absence of an assured source of other funding, the department has an obligation to continue to collect those contributions in a manner which will appropriately fund Montana's unemployment insurance trust fund. Now that peak unemployment has passed, the department concludes that the most equitable method of funding Montana's unemployment insurance program is to resume and continue with benefits charging as has been the basis for program operation. However, because the charging is set on a claim on the initial filing of a claim, this will only apply to newly filed claims. Any existing claims filed since the beginning of the emergency will not be charged to the employer.

4. The department has adopted New Rule I (24.11.478) with the following changes, new matter underlined, deleted matter interlined:

NEW RULE I (ARM 24.11.478) COVID-19 CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS FOR WEEKS OF UNEMPLOYMENT BEGINNING ON OR AFTER JULY 12, 2020 (1) through (6) remain as proposed.

(a) Specifically, claimants are advised that they will not be eligible for benefits if:

(i) they refuse to return to work when requested by the employer and suitable work can be performed in compliance with the emergency declarations and directives; or

(ii) they refuse to accept suitable work for which the claimant applies or is offered if that work can be performed in compliance with the emergency declarations and directives.

(7) Only during the duration of the emergency declarations and directives related to the COVID-19 pandemic issued by the Governor, the following apply:

(a) Regarding ARM 24.11.447, the registration and active status requirements are deemed to be fulfilled if the claimant has an account registered with MontanaWorks.com or, if filing over the phone or on paper, the department has established an account for the claimant.

(b) Regarding ARM 24.11.452A(4), a claimant is temporarily considered to be actively seeking work as long as the claimant is registered under (7)(a) of this rule.

(c) Regarding ARM 24.11.453A, a claimant is temporarily excused from the work search contact requirements of this rule in order to protect the public health, safety, and welfare.

(8) A claimant who is otherwise eligible for benefits pursuant to this rule is deemed to have fulfilled the waiting period as of the date the temporary layoff is effective.

(7) and (8) remain as proposed but are renumbered (9) and (10).

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-102, 39-51-301, 39-51-501, MCA

/s/ Mark Cadwallader

Mark Cadwallader

Alternate Rule Reviewer

/s/ Brenda Nordlund

Brenda Nordlund, Acting Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 18, 2020.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.138.504 approved clinical	)	ADOPTION
exam criteria for dentists and dental	)	
hygienists, 24.138.3102 specialty	)	
advertising, and the adoption of New	)	
Rule I dental hygienists – temporary	)	
practice permits	)	

TO: All Concerned Persons

1. On July 10, 2020, the Board of Dentistry published MAR Notice No. 24-138-78 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1268 of the 2020 Montana Administrative Register, Issue No. 13.

2. On July 31, 2020, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. One comment was received by the August 7, 2020 deadline.

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

COMMENT 1: Several commenters requested the board consider accepting the ADEX manikin exam for both 2020 dental graduates and dental hygiene graduates.

RESPONSE 1: The board appreciates all comments received in the rulemaking process and will be evaluating and potentially addressing the addition of other exams in a future rules project. Regarding dental hygienists, the board is adopting NEW RULE I to provide immediate licensure relief via temporary permits for hygienists awaiting their examinations. The board believes that a clinical patient-based examination for hygienist applicants is required to ensure public safety.

4. The board has amended ARM 24.138.504 and 24.138.3102 exactly as proposed.

5. The board has adopted New Rule I (24.138.513) exactly as proposed.

BOARD OF DENTISTRY  
AIMEE AMELINE, DDS  
PRESIDENT

/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 August 18, 2020.

BEFORE THE BOARD OF VETERINARY MEDICINE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.225.301 definitions,	)	ADOPTION, AND REPEAL
24.225.514 patient medical records	)	
and recordkeeping, 24.225.550	)	
unprofessional conduct, 24.225.709	)	
continuing education, 24.225.904	)	
certified euthanasia technicians –	)	
license requirements, 24.225.907	)	
board-approved training program	)	
criteria, 24.225.910 certified	)	
euthanasia technician examinations –	)	
written and practical, 24.225.920	)	
application for certified euthanasia	)	
agencies, 24.225.921 inspections –	)	
initial and annual, 24.225.925	)	
continuing education – certified	)	
euthanasia technicians, 24.225.950	)	
unprofessional conduct; the adoption	)	
of New Rule I certified euthanasia	)	
agency operation standards, New	)	
Rule II change of attorney-in-fact, New	)	
Rule III closure of a certified	)	
euthanasia agency or loss of DEA	)	
permit; and the repeal of 24.225.901	)	
definitions, 24.225.926 termination of	)	
certified euthanasia technician	)	
employment and retirement of	)	
certificate	)	

TO: All Concerned Persons

1. On March 13, 2020, the Board of Veterinary Medicine (board) published MAR Notice No. 24-225-41 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 440 of the 2020 Montana Administrative Register, Issue No. 5.

2. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana with regards the COVID-19 pandemic in Executive Order 2-2020, and on March 14, 2020, extended the emergency in Executive Order 3-2020. Due to the timing of the publication of the notice of public hearing and the issuance of the executive orders, the April 7, 2020 in-person public hearing was canceled.

3. Several written comments were received by the April 10, 2020 deadline. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: One commenter recommended the board amend ARM 24.225.514(6)(f) to add diagnostic and laboratory tests used and their results because they belong with the other objective data listed.

RESPONSE 1: The board agrees and is amending ARM 24.225.514(6) by moving language from (h) to (f) for better subject-matter grouping and ease of use by licensees and the public.

COMMENT 2: A commenter opined that diagnosis or tentative diagnosis should be a separate category in ARM 24.225.514(6) as the assessment part of a standard SOAP medical record. The commenter suggested this language should be before the treatment plan in (6).

RESPONSE 2: The board agrees with the comment and is amending ARM 24.225.514 accordingly.

COMMENT 3: A commenter suggested the board amend ARM 24.225.514(6) because amounts is listed twice, and dosage and duration should also be included.

RESPONSE 3: The board agrees and is amending ARM 24.225.514(6)(g)(ii) accordingly as the terminology is more accurate and falls within the board's intent for this requirement.

COMMENT 4: One commenter suggested the board strike "other" from ARM 24.225.514(14)(a) as it implies newspapers and written communications are also electronic means.

RESPONSE 4: The board agrees and is amending the section accordingly.

COMMENT 5: A commenter asked why the board included the caution that failure to comply with ARM 24.225.514(14)(c) could lead to disciplinary action. The commenter stated it seems unnecessary since failure to comply with any rules may justify disciplinary action.

RESPONSE 5: The board agrees and is amending ARM 24.225.514(14)(c) accordingly. The board notes that licensees are held accountable under all the board's statutes and rules and disciplinary action may be taken for failure to comply with any of the board's requirements.

COMMENT 6: One commenter asked if the board is going to use "veterinarian" instead of "licensee" in the rules then the board should make this change in ARM 24.225.514 and 24.225.550.



RESPONSE 6: The board agrees and is amending ARM 24.225.514(7) and 24.225.550(1)(c) and (1)(q) accordingly.

4. The board has amended ARM 24.225.301, 24.225.709, 24.225.904, 24.225.907, 24.225.910, 24.225.920, 24.225.921, 24.225.925, and 24.225.950 exactly as proposed.

5. The board has adopted New Rules I (24.225.922), II (24.225.923), and III (24.225.924) exactly as proposed.

6. The board has repealed ARM 24.225.901 and 24.225.926 exactly as proposed.

7. The board has amended ARM 24.225.514 and 24.225.550 with the following changes, stricken matter interlined, new matter underlined:

24.225.514 PATIENT MEDICAL RECORDS AND RECORDKEEPING

(1) through (6)(e) remain as proposed.

(f) all written records and notes, radiographs, sonographic images, video recordings, photographs, or other imaging and laboratory reports, including diagnostic and laboratory tests or techniques utilized, and the results of each;

(g) diagnosis or tentative diagnosis;

~~(g)~~ (h) treatments or intended treatment plans, or both, including:

(i) remains as proposed.

(ii) ~~amounts of all~~ medications administered, dispensed, or prescribed including amount dosage amounts and frequency for both inpatient and outpatient care;

~~(h) diagnosis or tentative diagnosis, including diagnostic and laboratory tests or techniques utilized, and the results of each;~~

(i) and (j) remain as proposed.

(7) Veterinarians shall indicate by recognizable means on each patient's medical record any treatment the ~~licensee~~ veterinarian has performed, or which the veterinarian has directed support personnel to perform.

(8) through (13) remain as proposed.

(14) A veterinarian-practice owner terminating practice, retiring, relocating, or selling a practice shall:

(a) notify clients within 30 days by local newspaper, in writing, or via ~~other~~ electronic means that they are no longer available to patients;

(b) remains as proposed.

(c) specify who the new records owner is, and when applicable, where the patient medical records can be obtained. ~~Failure to comply with this subsection may lead to disciplinary action.~~

(15) and (16) remain as proposed.

24.225.550 UNPROFESSIONAL CONDUCT (1) through (1)(b) remain as proposed.

(c) failing to provide care in a competent and humane manner consistent with prevailing standards of practice for the species of animal and the professed area of expertise of the veterinarian. ~~Licensees~~ Veterinarians must meet the currently accepted standards of practice for the profession of veterinary medicine as described under:

(i) through (p) remain as proposed.

(q) failure to report to the proper authorities cruel or inhumane treatment to animals, if the ~~licensee~~ veterinarian has direct knowledge of the cruel or inhumane treatment;

(r) and (s) remain as proposed.

BOARD OF VETERINARY MEDICINE  
PAUL MCCANN, DVM, PRESIDENT

/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 August 18, 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 DECISION ON  
Rules I through III pertaining to     ) PROPOSED ADOPTION  
flavored electronic smoking devices     )

TO: All Concerned Persons

1. On June 26, 2020, the Department of Public Health and Human Services (department) published MAR Notice No. 37-923 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1105 of the 2020 Montana Administrative Register, Issue Number 12.

2. A public hearing on the notice of proposed adoption of the above-stated rules was held on July 16, 2020. The public comment period ended on July 24, 2020.

3. The anticipated polling of the legislature has revealed that additional education and collaboration is necessary before moving forward on this issue. Accordingly, the department withdraws MAR Notice No. 37-923 from consideration and will not be adopting the proposed rules.

4. The department remains committed to its mission to protect the health and well-being of Montanans.

/s/ Peter Bovingdon  
Peter Bovingdon  
Rule Reviewer

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

Certified to the Secretary of State August 18, 2020.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New     ) NOTICE OF ADOPTION  
Rules I through XIV pertaining to the     )  
Montana Economic Development     )  
Industry Advancement Act (MEDIAA)     )

TO: All Concerned Persons

1. On March 13, 2020, the Department of Revenue published MAR Notice No. 42-1019 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 473 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. 42-1019 at page 568 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. 42-1019 at page 774 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 8, 2020, a public hearing was held via videoconference to consider the proposed rulemaking. The following commenters appeared remotely and provided oral testimony: JP Gabriel, Filmlites Montana, LLC; Christopher Cronin, producer; Denny Staggs, VisionHawk Films; and Steve Grover, Montana Studios, LLC. The following person appeared remotely but provided no oral testimony: Kathleen Rakela, filmmaker. The following persons provided formal written comments: JP Gabriel, Filmlites Montana, LLC; Steve Grover, Montana Studios, LLC; Kathleen Rakela, filmmaker; and Adam Morra, Vice President/Tax Counsel, Paramount Network.

5. The department has adopted New Rule III (42.4.3403), New Rule IV (42.4.3406), New Rule VI (42.4.3408), New Rule VII (42.4.3411), New Rule VIII (42.4.3412), New Rule IX (42.4.3413), New Rule X (42.4.3414), New Rule XI (42.4.3417), New Rule XII (42.4.3418), New Rule XIII (42.4.3419), and New Rule XIV (42.4.3420) as proposed.

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

NEW RULE I (42.4.3401) DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) through (5) remain as proposed.

(6) "In-studio facility and equipment," for the purpose of claiming the additional 10 percent credit under 15-31-1007(3)(b)(vi), MCA, means:

(a) a permanent, enclosed building or structure that a production company rents for a "qualified production activity," as defined under 15-31-1003(16)(a), MCA; and

(b) equipment (i.e., personal property) that a production company rents for a "qualified production activity," as defined under 15-31-1003(16)(a), MCA.

The facility must not be used exclusively for storage and the equipment must be provided by the party renting the facility.

(7) through (16) remain as proposed.

AUTH: 15-31-1012, MCA

IMP: 15-1-201, 15-31-1012, MCA

NEW RULE II (42.4.3402) MEDIA PRODUCTION TAX CREDITS - DETERMINATION OF CREDIT BASE (1) The media production tax credit is the sum of one or more of the production tax credits provided under 15-31-1007, MCA. The basis for each tax credit is determined separately.

(a) remains as proposed.

(b) Compensation, as described in 15-31-1003(3), MCA, can only be used in one of the credits provided in 15-31-1007(3)(b)(i) through (iv), MCA, and includes the portion of a payment to a loan-out company for personal services. Compensation incurred in Montana within six months ~~from the beginning of principal photography~~ of state certification of the production may be included.

(c) through (5) remain as proposed.

(6) Production expenditures for services not included in compensation may be included in production expenditures as follows.

(a) through (f) remain as proposed.

(g) The cost of lodging or housing paid in Montana to accommodate crew members, employees, actors, directors, writers, and producers ~~to the extent the lodging facility is subject to the Montana lodging tax, as provided under 15-65-111, MCA, or is rental housing.~~ Rental housing must be substantiated with a copy of the signed lease or rental agreement identifying the name and address of the landlord, the address of the rental, the stated term of the rental, and the rental amount. The cost of lodging or housing in Montana to accommodate individuals involved directly or indirectly in the marketing function of the state-certified production shall not be included.

(h) remains as proposed.

(7) Preproduction expenditures may be included:

(a) in the first tax year's expenditures if they are attributable to production expenditures and compensation incurred no more than six months prior to production certification by the Montana Department of Commerce ~~and do not include any compensation of crew members, actors, directors, writers, or producers.~~

(b) through (13) remain as proposed.

AUTH: 15-31-1012, MCA

IMP: 15-1-201, 15-31-1012, MCA

NEW RULE V (42.4.3407) TAX CREDIT FOR POSTPRODUCTION WAGES – CREDIT BASE (1) remains as proposed.

(2) When an employee is not paid an hourly wage, the postproduction company must provide an hourly cost of the employee compensation based on a regular work week. No wages may be included in the postproduction credit base if the same wages are already included in a production credit base.

(3) through (5) remain as proposed.

AUTH: 15-31-1012, MCA

IMP: 15-31-1012, 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. Grover made a general comment stating that it appears the department is adding "qualifying expense" rules to the administrative process. Mr. Grover's understanding was that ". . . [the Department of] Commerce would provide the rules for qualifying expenses and [the Department of] Revenue would provide the administrative rules necessary to implement the issuance of the tax credits and ensure compliance."

RESPONSE 1: The qualification of expenses for a tax credit is a statutorily designated duty of the department under the Montana Economic Development Industry Advancement Act (MEDIAA), where the Department of Commerce is required, in addition to other duties under MEDIAA, to review production company applications and to certify media production projects.

Any administrative rules promulgated by the department pertaining to "qualifying expenses" are authorized and implemented under MEDIAA and lie within the department's primary statutory duties regarding the general supervision, enforcement, and taxpayer compliance with the tax laws of Montana, as described in 15-1-201, MCA.

COMMENT 2: Mr. Grover questioned the language in the last sentence of the definition in New Rule I(6) as "why can't the facility rent the equipment and the facility?"

RESPONSE 2: The department appreciates Mr. Grover's comment and the answer to the immediate question is "yes," someone may rent both the in-studio facility and any related equipment. Based on the comment, the department has amended the definition upon adoption to separate optional equipment rental from the studio facility rental.

COMMENT 3: Mr. Gabriel made several comments which can be summarized as concerns about how MEDIAA and the department's proposed rules do not go far enough to define: (1) what constitutes a Montana equipment rental vendor in New Rule II(6); and (2) the degree of permanency of a vendor's place of business in Montana so that a production or post production company's equipment rental expenses legitimately qualify for media production or media postproduction tax credits.

Mr. Gabriel provided references to the state of Georgia's administrative regulations which define equipment rental vendor practices under Georgia's equivalent to MEDIAA and anecdotal examples of circumventing tax credit processes he perceives will present themselves in Montana without additional regulation.

Similarly, Mr. Grover questions how do you define "principal place of business in Montana?"

RESPONSE 3: A Montana equipment rental vendor is one that has a "permanent place of business in Montana," as defined under New Rule I(11), such as a physical location where inventory is located, and the department has provided examples in the definition (e.g., office, factory, store, etc.) as guidance.

As to the degree of permanency of a vendor in Montana, MEDIAA intends to foster business activity in the state and does not forbid out-of-state businesses from undertaking business in Montana or deny opportunities, which is why New Rule II(6)(a) only requires that a business have a permanent place of business in the state without any time requirement.

Regarding Mr. Gabriel's information about the state of Georgia's vendor practices, the department appreciates Mr. Gabriel's concerns, but cannot address the efficacy of another state's administrative regulations or adopt such additional regulation without statutory authority.

The department has identified the possibility that out-of-state expenses, such as those for rental equipment, may be submitted in a credit calculation, and the department has developed audit procedures to identify these expenditures. Any production expenditure reported by a production company will require the provider of that service or product to report the income and, without the reporting of that income, the department will deny that expense for inclusion in the credit base.

Finally, the department's rules are consistent under MEDIAA which require a production company to maintain a Montana office, which is further defined under New Rule I(8) as, "the principal place of business of the production company. . . ." To satisfy the principal place of business requirement, a production company must establish an office in Montana.

COMMENT 4: Mr. Morra expresses concern that the language in New Rule II(1)(b), which excludes compensation that is incurred more than six months from principal photography is too restrictive. He suggests clarifying language is necessary to

ensure all Montana compensation on the production is included in the qualified spend.

RESPONSE 4: The department concurs that 15-31-1007(1), MCA, includes expenditures incurred up to six months prior to state certification of the production, and not six months prior to the beginning of principal photography. The department has made amendments to the rule upon adoption as correction. However, the department cannot amend the six-month time frame because it is statutory and exceeds the department's rulemaking authority.

COMMENT 5: Mr. Morra questions if loan-out withholding is required even if the loan-out is already registered to do business in the state. He adds that other states require loan-out withholding or loan-out registration and suggests that the providing an option permits the department to track loan-outs providing services in Montana, and it provides the production company flexibility in dealing with talent and crew.

RESPONSE 5: Loan-out withholding is required regardless of whether the loan-out company is registered to do business in Montana. See 15-31-1003(3)(c), MCA (Compensation includes payments to a loan-out company by a production company if the production company withheld and remitted Montana income tax at the rate of 6.9%).

COMMENT 6: Regarding depreciation calculation of personal property acquired in Montana for a qualified production, Mr. Morra observes production finance offices do not prepare cost reports using tax accounting or tax depreciation for a production and they cannot wait until the annual tax returns are prepared to receive tax return depreciation from the company's tax compliance team.

Mr. Morra further comments that other states allow the full purchase price in the season the purchase takes place, as long as the asset was not sold after the season wrapped. Another possibility would be to use 50 percent of the value in year one, and if the production returns for a second season, recover the remaining 50 percent.

RESPONSE 6: The purchase of personal property with a useful life of more than one year could be used in multiple productions, including multiple productions that could qualify for the credit. In addition, such property could be sold after the production has taken place, effectively reducing the true cost of the property relative to the production. Allowing the full cost of such property would, therefore, allow a credit for an expenditure that does not relate to the production. The department finds the lesser of straight-line depreciation or depreciation allowed for tax purposes during the tax year as a reasonable estimation of the costs related to the production.

Regarding the unavailability of tax records during production, since the principal object of MEDIAA is to provide an income tax credit, it is assumed that its calculation must be in relation to generally accepted accounting principles and tax accounting.



COMMENT 7: Mr. Morra comments to the mileage requirements in New Rule II(5), that in other jurisdictions, driver labor and leased vehicles qualify as separate categories. Additionally, for "drop loads" between states (e.g., camera equipment between Montana and California) 50 percent of the shipping cost should qualify as long as Montana is the originating location or the destination. This is how many other states operate.

RESPONSE 7: In order for an expenditure to be allowed in the credit base, the expenditure must have been incurred in Montana. Driver labor, to the extent the driver is an employee of the production company, is accounted for separately from the cost of leased vehicles.

COMMENT 8: Regarding the equipment rental expenditure requirements provided in New Rule II(6), Mr. Morra questions whether Montana has the TV/Film infrastructure that can support a large-sized production. If not, will the state allow out-of-state production vendors to register for business in Montana (and pay Montana taxes) to provide goods and services to support the incentive?

Mr. Morra comments that when states allow conduit purchases, it is an effective way to grow the infrastructure and the jobs for the film industry in that state because businesses will start with a pass-through presence, but once industry shows promise, a brick and mortar presence follows.

Mr. Morra also comments that many other states allow 50 percent of a production company's shipping expenditures as long as Montana is the originating location or the destination.

Similar to Mr. Morra's comment, Mr. Grover opines that Montana production and production supply companies will likely have to ship equipment from out of state in order to meet demand. If so, why would the expense incurred by a Montana-based company not qualify?

RESPONSE 8: An expense incurred in Montana is included in the credit base and an expense that is not incurred in Montana is not included. Rental expenses that are incurred and earned in another state do not qualify for the credit. See 15-31-1003(11), 15-31-1006(3)(c), 15-31-1007(3)(a), and 15-31-1007(3)(b)(vi), MCA.

COMMENT 9: In New Rule II(6)(g), Mr. Grover questions why does a lodging facility have to be subject to the lodging tax in order for expenses to qualify. Does this mean if a production company rents an apartment or house the rent expense would not qualify?

RESPONSE 9: The department has decided not to include this requirement in the proposed rule at this time, and has amended the rule accordingly upon adoption.

COMMENT 10: In New Rule II(6)(g), Mr. Grover questions how are entertainment expenses defined and why do they not qualify as includable expenses.

RESPONSE 10: Section 15-31-1003(11), MCA, provides that a production expenditure means "a preproduction or production expenditure incurred in Montana that is directly used for qualified production activity . . . ." Entertainment expenses are defined by the Internal Revenue Service in Publication 463 (for use in 2019 returns) as, " . . . any activity generally considered to provide entertainment, amusement, or recreation." Entertainment expenses are not considered direct expenses to the production.

COMMENT 11: Regarding the qualification of preproduction expenses described in New Rule II(7), Mr. Grover questions why are writers and producers excluded. Who does qualify?

RESPONSE 11: Compensation for writers and producers within six months of the Department of Commerce's production certification is allowable preproduction expenses provided the compensation is earned in Montana and all income tax and withholding laws are followed. The department has amended the rule upon adoption.

COMMENT 12: Mr. Grover questions the general intent and purpose of New Rule II(11) which describes the proposed federal adjusted income requirement when calculating the Montana net income of the production company that files a claim for the media production tax credit.

Mr. Grover contends that most out-of-state production companies will not have any revenue in Montana, even if they form a Montana-based production company to produce a project. Revenue will not be recognized until the project is sold, and that sale will most likely be by the out of state parent company.

However, a production company that is truly based in Montana is going to have revenue from a variety of sources, and if that company has to add back the expenses that also qualify for the tax credit then they are going to be at a tax-disadvantage to the production company which is only established in Montana for the purpose of a single production. Further, if any company has to add back the expenses that are allowable for the tax credit the state is not truly offering a competitive tax incentive – the state is simply giving a company the option of deducting the production expenses or claiming a tax credit.

Mr. Grover does not believe other state film incentives have this provision.

Similar to Mr. Grover's comment, Mr. Staggs opines that the tax rules to avoid "double dipping" only affect Montana companies and put local film companies at a disadvantage.

RESPONSE 12: Section 15-31-1007(8), MCA, does not allow for both a credit and a deduction for an expense incurred as it states, "The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the production expenditure or compensation on which the amount of the credit was computed as a deduction under 15-30-2131 or 15-31-114 [MCA]." Thus, if a credit has been taken on qualified expenses, then these expenses must be added back on the return.

COMMENT 13: In response to New Rule II(12), Mr. Staggs comments that the department's rules should disclose, up front, any sort of add backs or state tax structure elements like that which would potentially affect the net amount of the tax credit received by an applicant.

RESPONSE 13: Upon submitting the independent CPA report and all of the applicable and required information, the department intends to disclose an estimate of the credit. However, a definitive credit amount will only be determined when the tax return for that year is filed by the production company. In addition, the department has sought to clarify the necessary elements in the rule and address ambiguous or confusing areas of the law.

COMMENT 14: In New Rule IV, Mr. Grover questions why the department proposes to allow combining "non-qualifying productions." Mr. Grover contends that either a production qualifies, or it does not, and suggests expanding the definition of "non-qualifying," because the rule is intended to apply to only those projects which do not meet the minimum spend requirements and other projects can also be non-qualifying based on the type of production, sexual content, etc.

RESPONSE 14: New Rule IV provides an opportunity for multiple small productions that are undertaken by the same production company to receive the media credit. This does not apply to non-qualifying productions due to type of production, sexual content, etc., but applies to those productions that do not meet the minimum threshold requirements to meet the required base investment.

COMMENT 15: Mr. Grover commented to an inadvertent omission that the department made in New Rule V(2), where the text should provide "When an employee is not paid an hourly wage, the postproduction company must provide an hourly cost of the employee compensation based on a regular work week."

RESPONSE 15: The department thanks Mr. Grover for the comment. As Mr. Baerlocher, on behalf of the department, discussed during the May 8 administrative rules hearing, the department also discovered this inadvertent omission after publication of the proposal rules notice and has amended the rule section upon adoption.

COMMENT 16: Mr. Morra comments that Paramount Network believes it is vital for the sustainability of the MEDIAA program to include a mechanism whereby the Department of Commerce or the Department of Revenue can specifically earmark incentive funds to a specific production upon review of the initial application submitted by the production.

Mr. Morra continues that as currently structured, only after the Department of Revenue reviews actual spend of the production does the production receive the allocated credits. Throughout most of the United States, and internationally, after submitting an initial application, film offices are empowered to set aside or allocate a portion of the credit fund pool to a production based on an estimated budget for the

television show or movie. Then, after the Department of Revenue reviews the final production spend, a final certificate is issued with an exact amount of the credits earned. This provides clarity and certainty to the production company that they know at the outset of the initial application, that credit funds will be available to that production.

RESPONSE 16: The production and postproduction credits are an annual election where various requirements must be met and reviewed annually in order to approve the production. Preapproval or the reserving of a credit for a production without reviewing the current status of a production would create a reliance on a credit that may not, ultimately, exist.

Furthermore, earmarking the credit for productions is problematic given the \$10 million cap. Earmarking the credit for productions that do not ultimately film in Montana could prevent other productions from receiving the credit who would have filmed in the state. In addition, earmarking funds for certain productions could be perceived as providing preferential treatment to certain productions.

COMMENT 17: Mr. Staggs comments that the application and tax credit determination process should be more straightforward and definite. In his words, ". . . [i]f you spend this much, you should receive this much in return . . . but you have to go through the process and the Department of Revenue will tell you that number." Mr. Staggs juxtaposes that statement with the question ". . . [o]r is it a mystery until the end, and they fill out all the paperwork and then get the tax credit?"

RESPONSE 17: The department cannot make any analysis or determination of a production company's income and expenses that it purports to earn or incur until the necessary amount of financial information applicable to the credit is received by the department. Without that financial information and a complete application, an exact credit cannot be determined.

COMMENT 18: Regarding New Rule VII(5)(c)(ii), Mr. Cronin asked whether the department is going to provide the production company applying for the tax credit with a chart of accounts or how it is [the department] would like to receive the information. Presumably, that information is not necessarily formatted the same way that the production company would organize their accounting and it would be very important for a production company to receive a list of these identification numbers very early on as the company keeps track of its costs--especially for the notations for college, underserved, etc.

RESPONSE 18: The department has developed a reporting format to eliminate confusion and expedite the approval process that the production companies can use to assist them in organizing their expenses.

COMMENT 19: Mr. Grover comments that the language in New Rule X appears to limit the amount of credits that can be issued/reserved; however, it was his understanding when the legislation passed that the tax credit limit applied to the

amount of tax credits that could be "used" in any given tax year, not the amount that could be issued.

RESPONSE 19: The reservation, at the time the application is submitted to the department, is used to apply the first-come first-served provision of the statute prior to the validation of the credit. The department agrees that the limit is on the amount of credit used in any given calendar year which is why valid credit in excess of the overall limit will be automatically carried forward to the next calendar year.

COMMENT 20: Ms. Rakela made comments that request the department change language in 15-31-1003(11), MCA, that describes airfare requirements as a component of what defines a production expenditure; and also requests the department change the description of underserved in 15-31-1003(19), MCA.

RESPONSE 20: The changes that Ms. Rakela suggests exceed the department's rulemaking authority; the department cannot change statutes and all statutory authority is a reserved function under the Montana Constitution of the Legislative branch.

/s/ Todd Olson

Todd Olson  
Rule Reviewer

/s/ Gene Walborn

Gene Walborn  
Director of Revenue

Certified to the Secretary of State August 18, 2020.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM        ) NOTICE OF REPEAL  
42.2.316 pertaining to alternative        )  
county business office hours            )

TO: All Concerned Persons

1. On June 26, 2020, the Department of Revenue published MAR Notice No. 42-1020 pertaining to the proposed repeal of the above-stated rule at page 1115 of the 2020 Montana Administrative Register, Issue Number 12.
2. The department has repealed the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Gene Walborn  
Gene Walborn  
Director of Revenue

Certified to the Secretary of State August 18, 2020.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the Petition of the	)	
Rippling Woods Homeowners	)	DECLARATORY RULING
Association, et al., for an administrative	)	
declaratory ruling upon the application	)	
of section 85-2-302, MCA, as applied to	)	
the reclamation plan of Opencut Mining	)	
Permit No. 2949, Moudy Pit Site, Ravalli	)	
County, Montana	)	

ORDER DENYING PETITION FOR DECLARATORY RULING

INTRODUCTION

1. On June 9, 2020, the above-named Petitioners filed a Petition for Declaratory Ruling with the Department of Natural Resources and Conservation's (Department or DNRC) Water Resources Division Administrator, pursuant to 2-4-501, MCA (Petition).

2. Petitioners are landowners and homeowners who reside near a proposed gravel pit in Ravalli County, Montana. Petitioners seek a declaratory ruling that the statutory provisions of the Montana Water Use Act, Montana Code Annotated (MCA) 85-2-101, et seq., require that certain "reclamation ponds" associated with Opencut Mining Permit No. 2949 issued by the Montana Department of Environmental Quality (DEQ) under the Opencut Mining Act, 82-4-401, et seq., MCA, require a beneficial water use permit from the Department. Petition, pp. 1-2.

3. On October 30, 2019, DEQ issued Opencut Mining Permit No. 2949 to Wayne Moudy (Opencut Permit Applicant) to conduct gravel mining operations at the site. Petitioners have appealed DEQ's decision to issue Opencut Mining Permit No. 2949 to the Board of Environmental Review, which is conducting a contested case proceeding. Petition, p. 2.

DECLARATORY RULINGS

4. The Montana Administrative Procedure Act (MAPA) requires each agency to "provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases." 2-4-501, MCA.

5. The Montana Attorney General has adopted model rules to implement this statutory directive at ARM 1.3.226 through 1.3.229. The Department has adopted the Attorney General's model rules. ARM 36.2.101. They include:

ARM 1.3.226 DECLARATORY RULINGS, INTRODUCTION.

(1) A party may seek a declaratory ruling from the agency when doubt exists as to how a statute or rule administered by an agency affects the party's legal rights.

ARM 1.3.227 DECLARATORY RULINGS, CONTENT OF PETITION. (1) A petition for declaratory ruling must be typewritten or printed.

(2) The petition must include:

- (a) the name and address of petitioner;
- (b) a detailed statement of the facts upon which petitioner requests the agency to base its declaratory ruling;
- (c) sufficient facts to show that petitioner will be affected by the requested ruling;
- (d) the rule or statute for which petitioner seeks a declaratory ruling;
- (e) the questions presented;
- (f) propositions of law asserted by petitioner;
- (g) the specific relief requested; and
- (h) the name and address of any person known by petitioner to be interested in the requested declaratory ruling.

...

(4) The record in a declaratory ruling proceeding shall include:

- (a) the petition;
- (b) a statement of matters officially noticed;
- (c) if for good cause shown the agency has held hearings on the petition, a stenographic record of the proceedings when demanded by a party; and
- (d) the ruling.

ARM 1.3.228 DECLARATORY RULINGS, DENIAL OF PETITION.

(1) If the agency denies a petition for declaratory ruling, the agency must mail a copy of the order denying the petition to all persons named in the petition.

(2) An order denying a petition must include a statement of the grounds for denial.

ARM 1.3.229 DECLARATORY RULINGS, EFFECT. (1) A declaratory ruling is binding between the agency and the petitioner concerning the set of facts presented in the petition.



(2) A declaratory ruling or notice of refusal to issue a ruling is a final agency decision subject to judicial review in the same manner as decisions or orders in contested cases.

6. One commentator has observed the following about the purpose of MAPA's declaratory ruling provision:

This provision allows a person to question whether a MAPA agency would potentially challenge an action of the person or entity, or to determine the potential entitlement of any government benefit which the agency may grant or withhold. Consequently, if a client's rights and obligations under agency law are unclear, counsel need only file an action for declaratory judgment with the agency to obtain a ruling. This will answer the question of how an agency would respond before the client acts. An agency's declaratory ruling is binding between the agency and the petitioner. The ruling, or agency's failure to rule, is subject to judicial review in the same manner as a contested case.

William L. Corbett, *Montana Administrative Law Practice: 41 Years After the Enactment of the Montana Administrative Procedure Act*, 73 Mont. L. Rev. 339, 369 (2012).

### THE PETITION

7. Name and address of the Petitioners. The Petitioners are: Jennifer and Randall Lint; Nancy Jacobsen; Rippling Woods Homeowners Association; Sarah Slater; Mark and Lisa van Keulen; Anne Lambert; Gretchen Langton; Kurt Vause; Kathleen Meyer and Patrick McCarron; Annette McDonald; and Brian Langton. Petitioners live in Victor, Ravalli County, Montana, and are represented by counsel with the Bloomquist Law Firm, 3355 Colton Drive, Suite A, Helena, MT 59602. Petition, pp. 1-2.

8. Statement of Facts. Petitioners allege the following facts in support of their Petition:

- a. The Petitioners contend that the reclamation plan approved by DEQ as part of Opencut Permit No. 2949 is a beneficial use of water and requires the Opencut Permit Applicant to apply to the Department for a water use permit. The Petition includes a description of the reclamation plan, which Petitioners allege amounts to the creation of three "scenic" ponds adjacent to a chronically dewatered stream in the Bitterroot subbasin closure area (Reclamation Plan). Petition, pp. 2-5.
- b. As part of the permitting process, the Opencut Permit Applicant filed a "Water Resources Assessment" with DEQ which provided: "no dewatering will occur or will be necessary to extract the sand and gravel reserves within the permit areas; and the year-round pond will not be used for any beneficial water uses regulated by the DNRC; therefore,

no adverse effects on nearby water sources or groundwater well rights are expected." Petition, Ex. 3, Water Resources Assessment, p. 5. Based on this information, DEQ approved the application and the proposed reclamation ponds under the approved reclamation plan. Petition, p. 3, Ex. 1.

- c. Petitioners contend that the ponds will consume water in a closed basin, resulting in adverse effect to their water rights. The Petition asserts that DEQ's determination that the post mining reclamation pits do not constitute a beneficial use of water cannot be reconciled with the Water Use Act. Petition, p. 10.

9. Facts to show that Petitioners will be affected by the requested ruling.

Petitioners allege the following facts to show they will be affected by the requested ruling:

- a. Petitioners have the right to protect their wells or surface water rights which will be adversely affected by the proposed Reclamation Plan. Petition, p. 4.
- b. DEQ's approval of the Reclamation Plan without requiring the Opencut Permit Applicant to first secure a beneficial water use permit under the terms of the Montana Water Use Act administered by DNRC does not protect Petitioners interests in the ground and surface water resources, and the Reclamation Plan will not be considered under the applicable laws related to the appropriation of water. Petition, p. 5.
- c. A declaratory ruling by DNRC on the questions presented will assure review of the Reclamation Plan will include compliance with the beneficial water use permitting requirements of the Water Use Act, as required by law. Id.

10. The rule or statute for which Petitioners seek a declaratory ruling.

Petitioners reference the following provisions of the Montana Water Use Act and the Department's administrative rules implementing the Montana Water Use Act on which they seek a declaratory ruling from the Department:

85-2-102, MCA. Definitions:

(1) "Appropriate" or "appropriation" means: (a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use; . . .

(5) "Beneficial use", unless otherwise provided, means: (a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; . . . [and]

(27) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

85-2-301, MCA. Right to appropriate - recognition and confirmation of permits issued after July 1, 1973. (1) After July 1, 1973, a person may not appropriate water except as provided in this chapter. A person may only appropriate water for a beneficial use.

85-2-302, MCA. Application for permit or change in appropriation right. (1) Except as provided in 85-2-306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization for a change in appropriation right from the department.

85-2-307, MCA. Notice of Application for permit or change in appropriation right.

85-2-308, MCA. Application for permit or change in appropriation right. Objections.

85-2-311, MCA. Criteria for issuance of permit. (1) ...Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of the evidence that the following criteria are met: [(a) through (g) omitted].

85-2-344, MCA. Bitterroot River subbasin temporary closure-definitions - exceptions.

ARM 36.12.101 Definitions:

(14) "Consumptive use" means the annual volume of water used for a beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products that does not return to ground or surface water.

(51) "Pit, pit-dam, or pond" means a body of water that is created by man-made means, which stores water for beneficial use.

(61) "Reservoir" means a pond, pit, or pit-dam, created by man-made means that impounds and stores water.

ARM 36.12.1701 Filing a Permit Application. (1) An application for beneficial water use permit (Form No. 600) must be filed when an applicant desires to use: (a) groundwater that exceeds 35 gallons per minute or a volume of ten acre-feet . . .

11. Questions Presented. The Petition seeks a declaratory ruling on the following questions:

*Whether the year-round reclamation ponds which will impound groundwater as part of the post-mining reclamation plan and use of the property mined under Opencut #2949, requires a beneficial water use permit under the Montana Water Use Act and the administrative rules of DNRC?*

Petition, p. 6. In the alternative, the Petition presents the following question:

*If the impoundment and use of groundwater in the proposed ponds under the Reclamation Plan for Opencut #2949 is not a beneficial use of water under the Water Use Act requiring a beneficial use permit, do the proposed reclamation ponds authorized by the reclamation plan constitute a "waste" of water prohibited under the Water Use Act?*

Petition, p. 7.

12. Propositions of law asserted by Petitioners. Petitioners make the following propositions of law in support of their requested ruling:

- a. The reclamation ponds are beneficial uses of water according to the above-referenced provisions of the Water Use Act. Petition, pp. 7-8.
- b. Under the Department's internal guidance regarding whether reclamation ponds are beneficial uses of water, the ponds under Opencut Mining Permit No. 2949 require a beneficial water use permit from the Department. Petition, p. 8.
- c. The reclamation ponds are appropriations of water for a beneficial use. Petition, pp. 8-9.
- d. If the reclamation ponds are not beneficial uses of water, the loss of water caused by the ponds is a "waste" of water prohibited by the Water Use Act. Petition, p. 9.
- e. DEQ's interpretation that the reclamation ponds do not require a beneficial water use permit cannot be reconciled with the Water Use Act. The requested declaratory ruling by the Department on the Reclamation Plan for Opencut Mining Permit No. 2949 is necessary to determine whether the Reclamation Plan is viable. Petition, p. 10.

13. Relief requested. Petitioners request the following relief from the Department: "a declaratory ruling that the groundwater to be impounded within the ponds under the Opencut [Mining Permit No.] 2949 reclamation plan is either (1) a beneficial use of water requiring a beneficial use permit from DNRC; or (2) a waste of water which is unlawful under the Water Use Act." Petition, p. 10.

14. The name and address of any person known by Petitioners to be interested in the requested declaratory ruling. Petitioners state that other nearby water users who rely on Big Creek water or water from the ditches near the Opencut Mining Permit No. 2949 area may be interested in the requested declaratory ruling. Petition, p. 11.

### ANALYSIS

15. Petitioners contend that DEQ's approval of the permit and associated reclamation plan cannot be reconciled with the Water Use Act, and the Department's issuance of the requested declaratory ruling will "assure review of the Reclamation Plan will include compliance with the beneficial water use permitting requirements of the Water Use Act, as required by law." Petition, p. 5.

16. The Opencut Act requires an applicant to demonstrate in its plan of operations for a new opencut permit: "that surface water and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the opencut operation . . . " 82-4-434(2)(I), MCA.

17. DEQ's administrative rules require: "in the event that the proposed opencut operation involves or may result in the diversion, capture, or use of water, acknowledgement that the operator consulted with the regional office of the Department of Natural Resources and Conservation, Water Resources Division, concerning the requirements to obtain water rights and possible adverse impacts to existing water rights . . . " ARM 17.24.218(1)(g)(v).

18. The Department has discretion when deciding whether to issue a requested declaratory ruling. In exercising its discretion, the Department must take into account the underlying purpose of declaratory rulings within the context of its jurisdiction.

19. MAPA provides discretion to an agency when deciding whether to issue a requested declaratory ruling, and an agency may decline to issue a ruling requested. 2-4-501, MCA; ARM 1.3.228. In the exercise of its discretion, the Department must keep in mind the purpose of declaratory rulings. Fundamentally, declaratory rulings from an agency are available for a party "when doubt exists as to how a statute or rule administered by an agency affects the party's legal rights." ARM 1.3.226.

20. While little guidance exists in statute or Montana case law regarding the proper scope of a declaratory ruling, the Department agrees with the interpretation presented above that 2-4-501, MCA, "allows a person to question whether a MAPA agency would potentially challenge an action of the person or entity, or to determine the potential entitlement of any government benefit which the agency may grant or withhold." Corbett, 73 Mont. L. Rev. at 369.

21. The Petition at issue in this matter is unusual in that it seeks a declaratory ruling that will affect the legal rights of the Opencut Permit Applicant, who is not a petitioner. The Department is unaware of any legal authority that would authorize it to join a non-petitioner to a declaratory ruling proceeding. A declaratory ruling is typically an available avenue for a party who is uncertain about how an agency will react to an action to be undertaken by the petitioning party to get some clarity prior to acting. That is why a "declaratory ruling is binding between the agency and the petitioner concerning the set of facts presented in the petition." ARM 1.3.229.

22. Here, if the Opencut Permit Applicant were the petitioner, it would be appropriate for the Department to issue a declaratory ruling on whether the reclamation plan includes a beneficial use of water requiring a permit. However, here if the Department chooses to issue the requested declaratory ruling, it will only be "binding" between the Petitioners and the DNRC on the particular facts presented in the Petition, which would have no binding effect on the Opencut Permit Applicant at all. Further, a declaratory ruling process does not contemplate an evidentiary hearing or additional fact finding by the agency.

23. The Petition resembles a preemptive water use complaint in which the Department could exercise its authority to pursue an enforcement action or an injunction for illegal water use pursuant to 85-2-114, MCA, rather than a proper petition for a declaratory ruling. Further, pursuant to 85-2-114(9), MCA, Petitioners may also seek relief, including injunctive relief, in district court to prevent the gravel pit with the approved reclamation plan. The declaratory ruling requested would do nothing to define Petitioners' legal rights under those statutory provisions.

24. Ultimately, a declaratory ruling of the Department on the Petition will affect a non-petitioner's legal rights. Any legal rights the Petitioners may have to challenge DEQ's issuance of Opencut Permit No. 2949 are not affected by the Department's refusal to issue the requested declaratory ruling. Finally, any legal rights Petitioners may have to challenge the reclamation ponds associated with the Reclamation Plan for violation of the Water Use Act under an appropriate action are not affected by the Department's refusal to issue the requested declaratory ruling.

### ORDER

For the reasons provided herein, the Department declines to issue a declaratory ruling on the questions presented in the Petition.

NOTICE

Pursuant to 2-4-501, MCA, a copy of this declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases.

DATED this 15th day of July 2020.

By: /s/ Jan Langel  
JAN LANGEL,  
DNRC Water Resources Division Administrator

CERTIFICATE OF SERVICE

I certify that on July 15, 2020, a true and correct copy of the foregoing *Order Denying Petition for Declaratory Ruling* was served on the following:

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## **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 February 14, 2020, through August 7, 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 2020 Montana Administrative Register.

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 July 2020 appear. Potential vacancies from September 1, 2020 through November 30, 2020, are also listed.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of August 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 JULY 2020**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>ABLE (Achieving a Better Life Experience) Program Oversight Committee</b>			
Mr. Mitchell Bohn	Governor	Baldry	7/24/2020
Billings			9/1/2023
Qualifications (if required): Member of the general public who has a disability			
<b>Advisory Council on Aging</b>			
Mr. Ryan Clark	Governor	Reappointed	7/24/2020
Billings			7/1/2023
Qualifications (if required): Public Representative			
Mr. Robert C. Meyers	Governor	Reappointed	7/24/2020
Great Falls			7/1/2023
Qualifications (if required): Public Representative			
Mr. Elmer James Opitz	Governor	Gillan	7/24/2020
Helena			7/1/2023
Qualifications (if required): Public Representative			
Ms. Peggy Lynne Tombre	Governor	Reappointed	7/24/2020
Bozeman			7/1/2023
Qualifications (if required): Public Representative			

**EXECUTIVE BRANCH APPOINTEES FOR JULY 2020**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Crime Control</b>			
Honorable Kaydee Snipes Ruiz Havre	Governor	Desmond	7/24/2020 1/1/2023
Qualifications (if required): Judiciary Representative			
<b>Board of Optometry</b>			
Dr. Mindy Sterner Leach Great Falls	Governor	Hoch	7/24/2020 4/1/2024
Qualifications (if required): Registered Optometrist			
<b>Board of Physical Therapy Examiners</b>			
Mrs. Holly Patricia Claussen Missoula	Governor	Reappointed	7/1/2020 7/1/2023
Qualifications (if required): Licensed Physical Therapist			
<b>Board of Public Accountants</b>			
Ms. Renatta Jones Billings	Governor	Reappointed	7/1/2020 7/1/2024
Qualifications (if required): Certified Public Accountant			
Ms. Lucinda Willis Polson	Governor	Reappointed	7/1/2020 7/1/2024
Qualifications (if required): Member of the general public who is not engaged in the practice of public accounting			

**EXECUTIVE BRANCH APPOINTEES FOR JULY 2020**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Regents of Higher Education</b>			
Ms. Amy Sexton	Governor	Miller	7/1/2020
Billings			6/30/2021
Qualifications (if required): Student Regent			
<b>Board of Sanitarians</b>			
Mrs. Tracy Nielsen	Governor	Reappointed	7/1/2020
Billings			7/1/2023
Qualifications (if required): Member from the public			
Mr. Eugene A. Pizzini	Governor	Reappointed	7/1/2020
East Helena			7/1/2023
Qualifications (if required): Member from the public			
Mr. Clayton Scott Vincent	Governor	Reappointed	7/1/2020
Havre			7/1/2023
Qualifications (if required): Registered Sanitarian			
<b>Committee on Telecommunications Access Services for Persons With Disabilities</b>			
Mr. Drew Arnot	Governor	Reappointed	7/1/2020
Missoula			7/1/2023
Qualifications (if required): Independent Service Provider			

**EXECUTIVE BRANCH APPOINTEES FOR JULY 2020**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Committee on Telecommunications Access Services for Persons With Disabilities Cont.</b>			
Dr. Lisa Claire Cannon	Governor	Reappointed	7/1/2020
Clancy			7/1/2023
Qualifications (if required): Licensed Audiologist			
Mr. Cameron C. Tulloch	Governor	Reappointed	7/1/2020
Bozeman			7/1/2023
Qualifications (if required): Disability Community (Deaf or Hard-of-Hearing)			
Ms. Barbara Varnum	Governor	Reappointed	7/1/2020
Polson			7/1/2023
Qualifications (if required): Person without a disability, senior citizen			
<b>Montana Organic Commodity Advisory Council</b>			
Mr. Nate Brown	Governor	Odden	7/24/2020
Belgrade			8/19/2023
Qualifications (if required): At-Large Member			
Mr. Brian Goldhahn	Governor	O'Connor	7/24/2020
Bozeman			8/19/2023
Qualifications (if required): Producer and Livestock			



**EXECUTIVE BRANCH APPOINTEES FOR JULY 2020**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Organic Commodity Advisory Council Cont.</b>			
Mr. Daryl Lasilla	Governor	Johnson	7/24/2020
Great Falls			8/19/2023
Qualifications (if required): Producer			
<b>Montana Pulse Crop Committee</b>			
Dr. Sreekala Bajwa	Governor	Reappointed	7/1/2020
Bozeman			6/30/2023
Qualifications (if required): Dean of Agriculture of MSU - Bozeman			
Mr. Paul Kanning	Governor	Reappointed	7/1/2020
Flaxville			6/30/2023
Qualifications (if required): Member from an eastern district			
Mrs. Jillien J. Streit	Governor	Reappointed	7/1/2020
Chester			6/30/2023
Qualifications (if required): Member from a western district			
<b>Montana Unmanned Aerial Systems Council</b>			
Mr. J. D. Jacoby	Governor	White	7/24/2020
Helena			12/30/2020
Qualifications (if required): Department of Commerce Designee			

**EXECUTIVE BRANCH APPOINTEES FOR JULY 2020**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Library Commission</b>			
Ms. Constance Behe	Governor	LaFromboise	7/24/2020
Kalispell			6/1/2023
Qualifications (if required):	Member		
Mr. Dalton K. Johnson	Governor	Kish	7/24/2020
Missoula			6/1/2023
Qualifications (if required):	Member		
<b>Teachers' Retirement Board</b>			
Mr. Daniel Chamberlin	Governor	Reappointed	7/1/2020
Helena			12/30/1899
Qualifications (if required):	Representative of the public		

**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2020 THROUGH NOVEMBER 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Board of Barbers and Cosmetologists</b>		
Mrs. Glenna Idelle Lee, Glendive Qualifications (if required): Licensed Electrologist, Esthetician, or Manicurist	Governor	10/1/2020
Ms. Amanda Thompson, Missoula Qualifications (if required): Licensed Electrologist, Esthetician, or Manicurist	Governor	10/1/2020
Mrs. Lauren Hansen, Missoula Qualifications (if required): Licensed Electrologist, Esthetician, or Manicurist	Governor	10/1/2020
<b>Board of Medical Examiners</b>		
Dr. James Feist, Bozeman Qualifications (if required): Doctor of Medicine	Governor	9/1/2020
<b>Board of Outfitters</b>		
Representative Julie E. French, Scobey Qualifications (if required): Member of the general public	Governor	10/1/2020
Mr. Hugo Tureck, Coffee Creek Qualifications (if required): Sports person	Governor	10/1/2020

**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2020 THROUGH NOVEMBER 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Board of Outfitters Cont.</b>		
Mr. John Way, Ennis Qualifications (if required): Outfitter licensed to provide fishing and hunting services	Governor	10/1/2020
Mr. Kerry Fee, Livingston Qualifications (if required): Sports person	Governor	10/1/2020
Ms. Marcia Brownlee, Missoula Qualifications (if required): Member of the general public	Governor	10/1/2020
<b>Board of Psychologists</b>		
Ms. Rebecca Ann Bird, Billings Qualifications (if required): General public	Governor	9/1/2020
<b>Building Codes Council</b>		
Ms. Suzanne Small Trusler, Ashland Qualifications (if required): Representative from the building contractor industry	Governor	10/1/2020
Mr. Jason Fitzgerald, Billings Qualifications (if required): Practicing architect licensed in Montana	Governor	10/1/2020
Mr. John Michael Gordon, Butte Qualifications (if required): Licensed electrician	Governor	10/1/2020
Ms. Deb Larson, Bozeman Qualifications (if required): Member of the general public	Governor	10/1/2020

**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2020 THROUGH NOVEMBER 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Building Codes Council Cont.</b>		
Mr. Matthew Lemert, Livingston Qualifications (if required): Licensed plumber selected by the Board of Plumbers	Governor	10/1/2020
Mr. Ron Bartsch, Montana City Qualifications (if required): Representative of the home building industry	Governor	10/1/2020
Mr. John Edwin Carmody, Butte Qualifications (if required): Practicing professional engineer licensed in Montana	Governor	10/1/2020
Mr. Robert Risk, Bozeman Qualifications (if required): County, city or town building inspector	Governor	10/1/2020
Mr. Dick Swingley, Helena Qualifications (if required): State Fire Marshall or designee	Governor	10/1/2020
Mr. Joshua K. Wallery, Helena Qualifications (if required): Representative of the Manufactured Housing Industry	Governor	10/1/2020
Mr. Jason Douglas Poston, Kalispell Qualifications (if required): Elevator Mechanic	Governor	10/1/2020
<b>Burial Preservation Board</b>		
Mr. Carl Davis, Missoula Qualifications (if required): Representative of the Montana Archaeological Association	Governor	9/1/2020

**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2020 THROUGH NOVEMBER 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Burial Preservation Board Cont.</b>		
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
<b>Get Outdoors Montana (GO-MT) Advisory Council</b>		
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

**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2020 THROUGH NOVEMBER 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Get Outdoors Montana (GO-MT) Advisory Council Cont.</b>		
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
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

**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2020 THROUGH NOVEMBER 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Get Outdoors Montana (GO-MT) Advisory Council Cont.</b>		
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
<b>Governor's Montana Forest Action Advisory Council</b>		
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
Mr. Ray King, Harlem Qualifications (if required): Fort Belknap Community Alternate	Governor	9/15/2020



**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2020 THROUGH NOVEMBER 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Governor's Montana Forest Action Advisory Council Cont.</b> Councilman Warren Morin, Harlem Qualifications (if required): Representative of the Fort Belknap Community	Governor	9/15/2020
<b>Montana Agriculture Development Council</b> Ms. Patricia Quisno, Harlem Qualifications (if required): Actively engaged in agriculture	Governor	9/1/2020
<b>Montana Forest Action Advisory Council</b> 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

**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2020 THROUGH NOVEMBER 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Montana Forest Action Advisory Council Cont.</b>		
Mr. Tony Colter, Deer Lodge Qualifications (if required): Forest products industry	Governor	9/15/2020
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

**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2020 THROUGH NOVEMBER 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Montana Forest Action Advisory Council Cont.</b>		
Ms. Leanne Marten, Missoula Qualifications (if required): Federal, state, local, and tribal governments	Governor	9/15/2020
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, Coeur d'Alene Qualifications (if required): Forest products industry	Governor	9/15/2020

**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2020 THROUGH NOVEMBER 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Montana Forest Action Advisory Council Cont.</b>		
Mr. Cameron Sholly, Yellowstone National Park Qualifications (if required): Federal, state, local, and tribal governments	Governor	9/15/2020
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
<b>State Historic Preservation Review Board</b>		
Mr. Jeff Shelden, Lewistown Qualifications (if required): Architect	Governor	10/1/2020

**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2020 THROUGH NOVEMBER 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Historic Preservation Review Board Cont.</b>		
Mr. Charles McLeod, Missoula Qualifications (if required): Archaeologist	Governor	10/1/2020
Ms. Marcella Walter, Helena Qualifications (if required): Architectural Historian	Governor	10/1/2020
<b>State Rehabilitation Council</b>		
Mr. Scott Trent, Missoula Qualifications (if required): State Workforce Innovation Board	Governor	10/1/2020
Ms. Coreen Louise Faulkner, Missoula Qualifications (if required): Advocacy Community	Governor	10/1/2020
Ms. Tiffany Costa, Billings Qualifications (if required): Advocacy Community	Governor	10/1/2020
Mr. Wayne Dagel, Billings Qualifications (if required): Advocacy Community	Governor	10/1/2020
Mr. Nicholas Domitrovich, Helena Qualifications (if required): Department of Public Health and Human Services Director or designee	Governor	10/1/2020
Ms. Brook Hodge, Missoula Qualifications (if required): Vocational Rehabilitation Counselor	Governor	10/1/2020

**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2020 THROUGH NOVEMBER 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Rehabilitation Council Cont.</b>		
Ms. Denise May, Missoula Qualifications (if required): Advocacy Community	Governor	10/1/2020
Mr. Andrew Clayton Kemp, Bozeman Qualifications (if required): Advocacy Community	Governor	10/1/2020
Ms. Michele Letendre, Bozeman Qualifications (if required): Advocacy Community	Governor	10/1/2020
Ms. Chanda Hermanson-Dudley, Helena Qualifications (if required): DPHHS-DETD Division Administrator	Governor	10/1/2020
Mr. Marvin Weatherwax Sr., Browning Qualifications (if required): Tribal Vocational Rehabilitation Director Representative	Governor	10/1/2020
Mr. Scott Eychner, Helena Qualifications (if required): State Workforce Innovation Board	Governor	10/1/2020
Ms. Cheri Reed-Anderson, Miles City Qualifications (if required): Vocation Rehabilitation Counselor	Governor	10/1/2020
<b>Trauma Care Committee</b>		
Ms. Lauri Jackson, Great Falls Qualifications (if required): Member from the Central Regional Trauma Care Advisory Committee	Governor	11/1/2020

**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2020 THROUGH NOVEMBER 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Trauma Care Committee Cont.</b>		
Mr. Bradley Louis Von Bergen, Billings Qualifications (if required): Member from the Eastern Regional Trauma Care Advisory Committee	Governor	11/1/2020
Dr. John Bradley Pickhardt, Missoula Qualifications (if required): Member from the Western Regional Trauma Care Advisory Committee	Governor	11/1/2020
Mr. Robert Michael Dowdy, Lewistown Qualifications (if required): Representative of the Montana Hospital Association	Governor	11/1/2020
Mr. Matthew Waller, Chester Qualifications (if required): Montana Hospital Association Representative	Governor	11/1/2020
Dr. David Joseph Newton, Ennis Qualifications (if required): Representative of the Montana Medical Assoc.	Governor	11/1/2020
Ms. Brenda Koessl, Glasgow Qualifications (if required): Montana Hospital Assoc. (MHA) Representative	Governor	11/1/2020
<b>Water and Wastewater Operators' Advisory Council</b>		
Ms. Starr Sullivan, Florence Qualifications (if required): Treatment plant operator holding the highest class certification	Governor	10/1/2020
<b>Workers' Compensation Court Judge</b>		
Mr. David M. Sandler, Kalispell Qualifications (if required): Judge	Governor	9/7/2020

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**COREY STAPLETON**  
SECRETARY OF STATE

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