

# MONTANA ADMINISTRATIVE REGISTER

2020 ISSUE NO. 6  
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PAGES 514-632



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 6

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 4.12.3011 pertaining to ) PROPOSED AMENDMENT  
Restricted Weed Seeds )

TO: All Concerned Persons

1. On April 17, 2020, at 10:30 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on April 10, 2020, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3156; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov).

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

4.12.3011 RESTRICTED WEED SEEDS (1) The name and number of restricted weed seed must be shown on the label. When the number of restricted weed seeds exceeds the allowance, the seed lot is prohibited for sale in Montana.

(2) Seeds offered for sale or sold shall not contain the following restricted weed seeds in quantities in excess of those listed below:

<u>Common Name</u>	<u>Species</u>	<u>No. of Seeds Per Pound</u>
(a) Quackgrass	(Agropyron repens)	0
(b) Perennial Sowthistle	(Sonchus arvensis)	0
(c) Wild Oats	(Avena fatua)	45
		of grass seed
		5
		of all other seed
(d) Dodder	(Cuscuta spp.)	9
(e) Curly Dock	(Rumex crispus)	45
(f) Jointed Goatgrass	(Aegilops cylindrica)	0
(g) Persian Darnel	(Lolium persicum)	9
		of grass seed
		0
		of all other seed
<del>(h) Yellow Toadflax</del>	<del>(Linaria vulgaris)</del>	<del>0</del>
<u>(h) Palmer Amaranth</u>	<u>(Amaranthus palmeri)</u>	<u>0</u>

AUTH: 80-5-139, MCA  
IMP: 80-5-120, MCA

REASON: The Department of Agriculture is amending ARM 4.12.3011 because yellow toadflax (*Linaria vulgaris*) is listed as a Priority 2B Noxious Weed (ARM 4.5.2019) and prohibited in seed (ARM 4.12.3010). Therefore, it is removed from the listing. Palmer amaranth is added to the listing as an invasive weed. It has not been detected in Montana but has the potential to be introduced through contaminated seed from out-of-state. Palmer amaranth has developed multi-modal herbicide resistance in other states and can contaminate agricultural seed in areas where it occurs which poses an imminent threat to Montana agricultural producers for the 2020 planting season. It is regulated as a Noxious Weed or prohibited plant in the states of Iowa, Ohio, Minnesota, North Dakota, South Dakota, Tennessee, Washington, and Wisconsin. The department recognizes that the hazard presented by Palmer amaranth to crop and forage production in Montana cannot be averted or remedied by any other administrative act. The economic impact of this rule amendment will be to prevent the intentional shipment of palmer amaranth seeds and seed mix containing it into Montana. This will impact buyers and sellers but does not prevent them sending it elsewhere such as the southwest USA where it is not prohibited. The department has no way to know the exact financial impact, but it is assumed to be vastly lower than the cost of allowing palmer amaranth to become an established weed in Montana.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3156; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov), and must be received no later than 5:00 p.m., April 30, 2020.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

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

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

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

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Agriculture

Certified to the Secretary of State March 17, 2020.



BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rules I, II, and III, and amendment of ) PROPOSED ADOPTION AND  
ARM 4.12.1018, 4.12.1020, and ) AMENDMENT  
4.12.1031 pertaining to Commodity )  
Dealer Licenses )

TO: All Concerned Persons

1. History of this rulemaking proposal: As seen in MAR Notice No. 4-19-262, a public hearing was held on September 4, 2019, at 10:00 am. In response, the department decided to rewrite the proposal.

On April 17, 2020, at 10:30 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at 302 N. Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules drafted based on the previous comments.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on April 10, 2020, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3156; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov)

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

NEW RULE I CONDITIONED, SUSPENDED, OR REVOKED LICENSES FOR COMMODITY DEALERS (1) Upon receiving a complaint, after an inspection, or when receiving an application, the department may issue a full, conditional, or suspended license consistent with this rule to ensure the producer's safety and maintain a competitive fairness consistent with Montana antitrust laws.

(2) The department may issue a conditional license if a request is received from the licensee and modifications are deemed to be in the best interest of producers, and the alternative is not issuing a license at all.

(3) All appeals, either formal or informal, of a conditional, suspended, or revoked license are subject to the MAPA dispute process. Informal appeals are sent by letter to the director and do not require an attorney.

(4) The department's anticipated uses of conditional, suspended, and revoked licenses are listed in (a) through (c).

(a) Conditional licenses are limited in scope and differ in the amount, type, or length as requested by the licensee as the result of an inspection or as initially issued by the department. Conditional licenses will clearly state results and whether a license will become a full license or move into a suspended/revoked status.

(b) Suspended licenses can be caused by incomplete paperwork, bonding, and/or failing to comply with a financial statement filing date pursuant to ARM 4.12.1020. Suspensions last for the period of the license or until the license is reinstated by correcting the purpose for the suspension.

(i) Partially suspended licenses can prevent licensees from entering into new contracts; and/or

(ii) Fully suspended licenses can prevent licensees from receiving commodities under current contracts until payment is rendered to the grower; and/or

(iii) Voluntarily suspended licenses can be allowed if a company ceases operation in Montana, needs to restructure, or plans to change management.

(c) Revoked licenses are voided by the department due to falsified paperwork, the inability to pay a producer, or a court order. The department may refuse to relicense an entity with a revoked license for up to five years.

AUTH: 80-4-403, MCA

IMP: 80-4-403, MCA

REASON: The department is authorized to modify commodity dealer licenses to ensure payment to producers. The proposed new rule provides common modifications and their associated triggers to help industry anticipate the department's action when responding to a variety of situations that arise in the commodity trade. No economic impact is associated with the proposed rule.

A similar rule was proposed on August 9, 2019, on page 1104 of the 2019 MAR Issue No. 15 (MAR Notice No. 4-19-262, NEW RULE I MODIFIED LICENSES FOR COMMODITY DEALERS). The department will not adopt this rule proposal and intends to adopt the current rule instead after receiving and responding to comments from industry stakeholders.

**NEW RULE II PENALTY MATRIX FOR COMMODITY DEALERS AND WAREHOUSE LAWS** (1) The look back period for all offenses is five years prior to the occurrence of the new violation, except for when operating as a commodity dealer without a license, which is eight years.

<b>Violation</b>	<b>1st time (or accidental)</b>	<b>2nd (or intentional)</b>	<b>3rd</b>
Required paperwork submitted one month or more late or incomplete with no risk to the farmer/customer	Warning	Warning	\$100 dollars per additional month and possible suspension of license until the paperwork is submitted
Required	Warning	\$250 dollars per	\$250 dollars per

paperwork submitted one month or more late or incomplete paperwork, with risk to the farmer/customer		additional month and possible suspension of license until the paperwork is submitted	additional month and possible revocation of license
Required language not included in commodity contract (i.e., deferred payment) or warehouse receipt not provided	Warning	\$100 per contract or missing receipt up to a maximum fine of \$5000	\$200 per contract or missing receipt up to a maximum fine of \$10,000 and possible revocation of license
Paperwork includes false or misleading material statements about buying, financial records, bonding, warehouse receipts, or storage capacity	Up to \$250 and possible suspension of license until the paperwork is corrected	The lowest corrected bonding cost amount or \$10,000, possible suspension, or revocation of license	The lowest corrected bonding cost amount or \$100,000, or revocation of license
Failure to post required testing information or retain samples as required by law	Warning	\$250	\$500
Operating as a commodity dealer or warehouse without a license	The higher bonding cost amount or \$500	The higher bonding cost amount or \$10,000 (no more than \$100,000)	

AUTH: 80-4-403, 80-4-429, MCA

IMP: 80-4-421, 80-4-426, 80-4-427, 80-4-428, 80-4-429, 80-4-502, 80-4-601, MCA

REASON: The proposed penalty matrix implements House Bill 50, passed in the 2019 Regular Session of the Montana Legislature. Civil penalties are defined for entities that fail to obtain proper licenses or are in violation of other commodity

dealer/warehouse laws. Fines are designed to discourage entities from not properly licensing and bonding.

A similar rule was proposed on August 9, 2019, on page 1104 of the 2019 MAR Issue No. 15 (MAR Notice No. 4-19-262, NEW RULE II PENALTY MATRIX FOR COMMODITY DEALERS AND WAREHOUSE LAWS). The department will not adopt this rule proposal and intends to adopt the current rule instead after receiving and responding to comments from industry stakeholders.

Economic Impact: The number of entities in violation is unknown. The department does not expect to issue fines in the first year of implementation and recognizes that collecting fines, especially minimal amounts, may be problematic. Compliance fines in subsequent years will range between \$0 and \$100,000.

NEW RULE III RECORDS RETENTION (1) Records required under 80-4-613, MCA must be maintained for at least three years after payment. After that time, a commodity dealer, absent a court order or litigation hold, may dispose of them.

AUTH: 80-4-403, MCA  
IMP: 80-4-403, 80-4-613, MCA

REASON: The law provides no clear guidelines on how long records are to be maintained. Three years is consistent with state record retention laws and give most parties a realistic time frame to start litigation and holds for documents balanced against the expense of maintaining them on the grain trade.

Economic Impact: This retention practice will save all licenses the cost of storing records in perpetuity, but the exact amount is hard to calculate and would depend on the size and age of the business.

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

4.12.1018 TERM OF LICENSES - EXPIRATION (1) A public warehouse license period ~~shall be for the term of~~ is July 1, through June 30, ~~or part thereof~~. A public warehouse license ~~shall expires~~ expires July 1 of each year.

(2) A commodity dealer license period ~~shall be for the term of~~ is July 1, through June 30, ~~or part thereof~~. A commodity dealer license ~~shall expires~~ expires July 1 of each year.

AUTH: 80-4-403, MCA  
IMP: 80-4-404, MCA

REASON: Proposed amendments update language to comply with Secretary of State Administrative Rules of Montana standards. No economic impact is associated with these amendments.

These amendments were proposed on August 9, 2019, on page 1104 of the 2019 MAR Issue No. 15. However, the department will not adopt this rule proposal and intends to adopt the current rule instead after receiving and responding to comments from industry stakeholders.

4.12.1020 FINANCIAL STATEMENTS FILING DATE (1) The financial statement accompanying an applicant's original application ~~shall~~ must show a statement closing date that is within six months of the date of application. Thereafter, the licensee applying for renewal ~~shall~~ must submit an annual statement not later than ~~90~~ 120 days after the close of ~~his~~ their business year.

(2) If the financial statement indicates noncompliance with the financial requirement provisions of the grain act or the licensee fails to submit an acceptable financial statement within ~~90~~ 120 days of the end of ~~his~~ their fiscal year end, ~~then~~ the department may immediately suspend ~~his~~ their license pursuant to the Administrative Procedure Act, issue a fine, and/or make the license conditional on the paperwork arriving at a specified time.

AUTH: 80-4-403, MCA

IMP: 80-4-421, 80-4-502, 80-4-601, MCA

REASON: Industry requested the department extend timelines for financial statement filings from 90 days to 120 days. Doing so increases the time entities have to acquire the required compliance paperwork and aligns with the current state of the industry. Additional language for late and/or noncompliant paperwork reflects changes made during the 2019 Regular Session of the Montana Legislature in House Bill 50 and Senate Bill 73.

These amendments were proposed on August 9, 2019 on page 1104 of the 2019 MAR Issue No. 15. However, the department will not adopt this rule proposal and intends to adopt the current rule instead after receiving and responding to comments from industry stakeholders.

Economic Impact: Proposed amendments grant additional time to licensees to submit their financial statements which may result in lower ancillary costs, such as accounting fees, for some. The exact amount of these reduced costs is not calculable.

4.12.1031 OTHER COMMODITIES (1) In addition to those specified commodities in 80-4-402, MCA, the following crops are commodities for all purposes:

(a) pulse crops including but not limited to peas, dried peas, chickpeas, and lentils;

(b) beans; and

(c) hemp.

(i) Hemp is an oil crop seed commodity covered under the provisions of 80-4-402, MCA, and ARM Title 4, chapter 19, subchapter 1.

AUTH: 80-4-402, MCA

IMP: 80-4-402, 80-4-501, 80-4-601, 80-4-704, 80-18-103, MCA

REASON: While hemp has been treated as an oil crop seed for commodity purposes, the department recognizes this may not be understood by entities seeking to comply with the law. By adding hemp-specific rules and laws, the department cross-references the commodity to make buyers aware of regulations and options.

These amendments were proposed on August 9, 2019, on page 1104 of the 2019 MAR Issue No. 15. However, the department will not adopt this rule proposal and intends to adopt the current rule instead after receiving and responding to comments from industry stakeholders.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, 302 N. Roberts, Helena, Montana, 59601; telephone (406) 444-3156; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov), and must be received no later than 5:00 p.m., April 30, 2020.

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

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

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

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

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Agriculture

Certified to the Secretary of State March 17, 2020.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 8.94.3731 pertaining to the ) PROPOSED AMENDMENT  
administration of the CDBG program )

TO: All Concerned Persons

1. On April 16, 2020, at 10:00 a.m., the Department of Commerce will hold a public hearing in Room 268 of the Park Avenue Building at 301 South Park Avenue, in Helena, Montana, or by conference call 1-877-273-4202, conference room 7865396, to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., April 14, 2020, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406)

841-2771; or e-mail [docadministrativerules@mt.gov](mailto:docadministrativerules@mt.gov).

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

8.94.3731 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – SMALL SCALE HOUSING DEVELOPMENT AND REHABILITATION HOUSING STABILIZATION PROGRAM APPLICATION GUIDELINES (1) The Department of Commerce adopts and incorporates by reference the ~~2017-2018 Application Guidelines for Small Scale Housing Development and Rehabilitation projects~~ 2020 Housing Stabilization Program Application Guidelines as rules for the ~~administration of the 2017-2018~~ Community Development Block Grant (CDBG) Program.

(2) remains the same.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, ~~Grants Bureau~~ Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the ~~Grants Bureau~~ Community Development Division web site at <http://comdev.mt.gov/Programs/CDBG/Housing/Applying> <https://comdev.mt.gov/Programs/CDBG/Housing/ApplicationForms>.

AUTH: 90-1-103, MCA

IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule to incorporate updated material for the administration of the 2020 Housing Stabilization Program Application Guidelines.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov, and must be received no later than 5:00 p.m., April 24, 2020.

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

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

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

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

/s/ Amy Barnes  
Amy Barnes  
Rule Reviewer

/s/ Tara Rice  
Tara Rice  
Director  
Department of Commerce

Certified to the Secretary of State March 17, 2020.



BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	SUPPLEMENTAL NOTICE OF
ARM 17.74.350, 17.74.352,	)	PUBLIC HEARING ON PROPOSED
17.74.355, 17.74.359, and 17.74.364;	)	AMENDMENT, REPEAL, AND
the repeal of 17.74.401, 17.74.402,	)	ADOPTION
17.74.403, and 17.74.404; and the	)	
adoption of New Rules I through IV	)	(ASBESTOS)
pertaining to incorporation by	)	
reference, definitions, asbestos	)	
project permits, training provider	)	
requirements, fees, and refunds	)	

TO: All Concerned Persons

1. On February 28, 2020, the Department of Environmental Quality (department) published MAR Notice No. 17-410 pertaining to the public hearing on the proposed amendment, repeal, and adoption of the above-stated rules at page 354 of the 2020 Montana Administrative Register, Issue Number 4.
2. Due to the COVID-19 (Coronavirus) reported cases in Montana and to reduce possible health risks, the department will cancel the March 24, 2020 informal public meeting and public hearing.
3. On April 29, 2020, at 10:00 a.m., the department will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. Sixth Avenue, Helena, Montana regarding the proposed amendment, repeal, and adoption of the above-stated rules in MAR Notice No. 17-410, beginning on page 354 of the 2020 Montana Administrative Register, Issue Number 4.
4. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Paralegal, no later than 5:00 p.m., April 22, 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).
5. The department is extending the comment period on the rules. Concerned persons may submit their data, views, or arguments 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., May 1, 2020. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ Edward Hayes

EDWARD HAYES

Rule Reviewer

BY: /s/ Shaun McGrath

SHAUN MCGRATH

Director

Certified to the Secretary of State March 18, 2020.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 32.2.404 Department of ) AMENDMENT  
Livestock brands enforcement )  
division fees ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Concerned Persons

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

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on April 23, 2020 to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.2.404 DEPARTMENT OF LIVESTOCK BRANDS ENFORCEMENT  
DIVISION FEES (1) New Brands brands and transfers:

(a) Recording of a new brand or mark:

(i) Recording of a new brand or mark during a rerecord year will not incur an additional rerecord charge.

(i) (ii) Livestock or ornamental \$200.00

(ii) (iii) Seasonal brand for going to grass 200.00

(iii) (iv) Seasonal brand for going to feed lot, market, or location 50.00

(b) Transfer of a brand or mark, livestock or ornamental 200.00

(i) Transferring of a brand or mark during a rerecord year will also incur rerecord charges

(c) Rerecording a brand or mark, livestock or ornamental ~~400.00~~ 175.00

(2) through (5) remain the same.

AUTH: 81-1-102, 81-3-202, MCA

IMP: 81-3-205, 81-3-211, 81-4-602, 81-4-605, 81-5-112, 81-7-504, 81-8-256, 81-8-264, 81-8-271, 81-8-276, 81-8-304, 81-9-113, 81-9-411, MCA

REASON: The department is proposing to update ARM 32.2.404 to reflect a \$75.00 fee increase to the rerecording of a brand or mark.

Rerecord fee collections occur only once every ten years. At the last rerecord in 2011, no fee increase was enacted making the last fee increase in 2001, 20 years ago. This fee increase is necessary to cover a significant portion of the department's brand office operations during the interim, taking into account the next ten years of inflation.

In addition to the fee increase, the department inserted language into the rule to clarify what fees brand owners would be accountable for paying during the rerecord year.

The proposed \$75 rerecord fee increase will affect approximately 16,560 persons at an estimated average cost of \$21 per year. The cumulative amount for all totals approximately \$347,760 per year.

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

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

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the businesses who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Those directly affected has been determined to be 25, based upon approximately 54,975 brands owned.

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

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

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

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

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

Certified to the Secretary of State March 17, 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 37.115.106 pertaining to pools,       ) PROPOSED AMENDMENT  
spas, and other water features            )

TO: All Concerned Persons

1. On April 16, 2020, at 9:00 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, <https://mt-gov.zoom.us/j/501224820>, meeting ID: 501 224 820;
- (b) Dial by telephone, +1 406 444 9999 or +1 646 558 8656, meeting ID: 501 224 820, find your local number: <https://mt-gov.zoom.us/j/501224820>;
- (c) Join by SIP, [501224820@zoomcrc.com](mailto:501224820@zoomcrc.com);
- (d) Join by H.323 (Polycom), 162.255.37.11##501224820; or
- (e) Join by Skype for Business, <https://mt-gov.zoom.us/skype/501224820>.

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

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

37.115.106 INCORPORATION BY REFERENCE (1) The Department of Public Health and Human Services, except as otherwise provided, adopts and incorporates by reference the following chapters of the International Swimming Pool and Spa Code (ISPSC), ~~2015~~ 2018, which sets forth design, construction, alteration, repair, and maintenance standards for public swimming pools. This publication may be obtained by contacting the International Code Council, 3060 Saturn Street, Suite 100, Brea, California 92821. The following chapters of this publication are being adopted with modifications as described:

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

(c) Chapter 3: General Compliance. This chapter has been adopted with the following modification:

(i) Sub-Section 305.1 – ~~Exceptions 1 and 2 are deleted in their entirety. is modified to read as follows, "The provisions of this section shall apply to the design of barriers for restricting entry into areas having pools and spas."~~

(d) through (2) remain the same.

(3) The department adopts and incorporates by reference the provisions in Circular FCS 3-2018 2020. Circular FCS 3-2018 2020 may be obtained by calling 406-444-2837 to request a copy; or email [hhsfcs@mt.gov](mailto:hhsfcs@mt.gov), or request one by mail by writing to DPHHS – FCS, P.O. Box 202951, Helena, MT 59620-2951, or by visiting the department's web site at:

<https://dphhs.mt.gov/publichealth/FCSS/SwimmingPools>.

AUTH: 50-53-103, MCA

IMP: 50-53-103, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to revise ARM 37.115.106, to adopt and incorporate by reference newer editions of the International Swimming Pool and Spa Code (ISPSC) and the department's circular governing standards for swimming pools.

Under current rule, the 2015 edition of the ISPSC and Circular FCS 3-2018 - Montana Standards for Swimming Pools are adopted and incorporated by reference. The department is proposing to update the rule to refer to the 2018 version of the ISPSC and Circular FCS 3-2020, Montana Standards for Swimming Pools.

Updating the rule to refer to the 2018 edition of the ISPSC is necessary to ensure consistency with revised Department of Labor and Industry rules adopting the 2018 edition of the ISPSC and ensure consistent standards for construction of pools. Updating the rule to refer to Circular FCS 3-2020 is necessary to implement proposed revisions to the Montana Standards for Swimming Pools circular. The department is proposing the circular revisions to clarify certain requirements relating to water testing, signage, and supervision in response to stakeholder feedback.

A copy of the circular with the proposed revisions is located at:  
<https://dphhs.mt.gov/publichealth/FCSS/SwimmingPools>.

#### Fiscal Impact

The department does not anticipate the proposed changes will have any fiscal impact.

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., April 24, 2020.

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

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

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

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

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

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

Certified to the Secretary of State March 17, 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 37.5.129, 37.62.103, 37.62.142,	)	PROPOSED AMENDMENT
37.62.148, 37.62.301, 37.62.303,	)	
37.62.305, 37.62.307, 37.62.309,	)	
37.62.501, 37.62.705, 37.62.707,	)	
37.62.901, 37.62.903, 37.62.905,	)	
37.62.909, 37.62.911, 37.62.913,	)	
37.62.915, 37.62.917, 37.62.919,	)	
37.62.923, 37.62.925, 37.62.927,	)	
37.62.929, 37.62.933, 37.62.937,	)	
37.62.945, 37.62.947, 37.62.949,	)	
37.62.951, 37.62.955, 37.62.959,	)	
37.62.965, 37.62.1101, 37.62.1103,	)	
37.62.1105, 37.62.1113, 37.62.1115,	)	
37.62.1117, 37.62.1122, 37.62.1303,	)	
37.62.1305, 37.62.1309, 37.62.1311,	)	
37.62.1313, 37.62.1315, 37.62.1501,	)	
37.62.1703, 37.62.1705, 37.62.1901,	)	
37.62.1903, 37.62.2101, 37.62.2103,	)	
37.62.2105, 37.62.2107, 37.62.2111,	)	
37.62.2113, 37.62.2119, 37.78.215,	)	
37.78.1013, 37.80.103, 37.80.201,	)	
37.82.416, and 37.85.407, pertaining	)	
to Child Support Enforcement	)	
Division program name change	)	

TO: All Concerned Persons

1. On April 16, 2020, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated 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/937244028>, meeting ID: 937 244 028;
- (b) Dial by telephone, +1 406 444 9999 or +1 646 558 8656, meeting ID: 937 244 028, find your local number: <https://mt-gov.zoom.us/u/ajQrLXmNG>;
- (c) Join by SIP, [937244028@zoomcrc.com](mailto:937244028@zoomcrc.com);
- (d) Join by H.323 (Polycom), 162.255.37.11##937244028; or
- (e) Join by Skype for Business, <https://mt-gov.zoom.us/skype/937244028>.

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

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

37.5.129 CHILD SUPPORT ENFORCEMENT SERVICES: APPLICABLE HEARING PROCEDURES (1) Hearings relating to child support ~~enforcement services~~ matters are available to the extent granted and as provided in ARM Title 46, ~~chapter 30, subchapter 6~~ 37, chapter 62, subchapter 9. Unless specifically referenced in that subchapter, the provisions of any other rule do not apply to such hearings.

AUTH: 53-2-201, MCA

IMP: 17-4-105, 40-5-202, 40-5-262, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

37.62.103 DEFINITIONS For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) remains the same.

(2) "~~CSED~~ CSSD" means the Child Support ~~Enforcement~~ Services Division of the Department of Public Health and Human Services.

(3) through (16) remain the same.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.142 SUPPORT PAYABLE IN DOLLARS (1) and (2) remain the same.

(3) Direct payments to the child, the parent or a third party will not be allowed as credit for payment of a child support obligation payable through the clerk of court, the child support ~~enforcement~~ services division or other entity specified in the court or administrative order.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.148 SUPPORT GUIDELINES TABLES/FORMS (1) The Child Support ~~Enforcement~~ Services Division (~~CSED~~) (CSSD) has developed a child support calculation worksheet. Copies of this worksheet may be obtained from the Department of Public Health and Human Services, Child Support ~~Enforcement~~

Services Division, P.O. Box 202943, Helena, MT 59620 or any regional office. The worksheet is also available on the department's web site at [www.dphhs.mt.gov/forms/](http://www.dphhs.mt.gov/forms/).

(2) Included for use with the worksheet are a financial affidavit, necessary tables, and information for completion of the guidelines calculation. To assure that these tables are current, the Child Support ~~Enforcement~~ Services Division will republish the tables annually as soon as practical after release of information upon which tables are based. The tables will be identified by the year of publication or republication.

(3) remains the same.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.301 APPLICABILITY OF RULES (1) The provisions of this chapter set forth the rules pertaining to administrative actions by the Child Support ~~enforcement~~ Services division (~~CSED~~) (CSSD) under Title IV-D of the Social Security Act, Title 40, chapter 5, MCA, and the applicable provisions of 17-4-105, MCA. Unless specifically provided, other department rules do not apply to ~~CSED~~ CSSD actions, notwithstanding any statements of general applicability contained in the rules. The provisions of this chapter do not apply to actions by the department under other chapters.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-201, 40-5-202, 40-5-203, 40-5-205, 40-5-206, 40-5-207, 40-5-208, 40-5-209, 40-5-210, 40-5-213, 40-5-214, 40-5-221, 40-5-222, 40-5-224, 40-5-225, 40-5-226, 40-5-227, 40-5-231, 40-5-232, 40-5-233, 40-5-234, 40-5-235, 40-5-236, 40-5-237, 40-5-238, 40-5-242, 40-5-243, 40-5-244, 40-5-247, 40-5-248, 40-5-251, 40-5-252, 40-5-253, 40-5-254, 40-5-255, 40-5-256, 40-5-257, 40-5-261, 40-5-262, 40-5-263, 40-5-264, 40-5-271, 40-5-272, 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, 40-5-443, 40-5-701, 40-5-702, 40-5-703, 40-5-704, 40-5-709, 40-5-710, 40-5-711, 40-5-712, 40-5-713, 40-5-801, 40-5-802, 40-5-803, 40-5-804, 40-5-805, 40-5-806, 40-5-807, 40-5-808, 40-5-809, 40-5-810, 40-5-811, 40-5-812, 40-5-813, 40-5-814, 40-5-815, 40-5-816, 40-5-817, 40-5-818, 40-5-819, 40-5-820, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-825, 40-5-901, 40-5-906, 40-5-907, 40-5-908, 40-5-909, 40-5-910, 40-5-911, 40-5-921, 40-5-922, 40-5-923, 40-5-924, MCA

37.62.303 DEFINITIONS For the purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) Insofar as they are not inconsistent with, or clarified by, the more specific definitions set forth in this chapter, the definitions set forth in 40-5-201, 40-5-403, 40-5-701, 40-5-801 and 40-5-901, MCA are adopted and incorporated ~~herein~~ by reference. Copies of 40-5-201, 40-5-403, 40-5-701, 40-5-801 and 40-5-901, MCA

may be obtained from the Department of Public Health and Human Services, Child Support ~~Enforcement~~ Services Division, P.O. Box 202943, Helena, MT 59620-2943.

(2) "ALJ" means a ~~CSED~~ CSSD administrative law judge whose duties are defined in ARM 37.62.901.

(3) "Caseworker" means an employee of the ~~CSED~~ CSSD who is authorized to initiate and participate in a contested case as provided in these rules and by ~~CSED~~ CSSD policy and procedures.

(4) through (6) remain the same.

(7) "~~CSED~~ CSSD" means the Child Support ~~enforcement~~ Services Division, an agency within the Department of Public Health and Human Services charged with the responsibility of providing support enforcement services under Title IV-D of the Social Security Act.

(8) remains the same.

(9) "OALJ" means the ~~CSED~~ CSSD 's office of the administrative law judge as described in ARM 37.62.901.

(10) and (11) remain the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-201, 40-5-202, 40-5-203, 40-5-205, 40-5-206, 40-5-207, 40-5-208, 40-5-209, 40-5-210, 40-5-213, 40-5-214, 40-5-221, 40-5-222, 40-5-224, 40-5-225, 40-5-226, 40-5-227, 40-5-231, 40-5-232, 40-5-233, 40-5-234, 40-5-235, 40-5-236, 40-5-237, 40-5-238, 40-5-242, 40-5-243, 40-5-244, 40-5-247, 40-5-248, 40-5-251, 40-5-252, 40-5-253, 40-5-254, 40-5-255, 40-5-256, 40-5-257, 40-5-261, 40-5-262, 40-5-263, 40-5-264, 40-5-271, 40-5-272, 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, 40-5-443, 40-5-701, 40-5-702, 40-5-703, 40-5-704, 40-5-709, 40-5-710, 40-5-711, 40-5-712, 40-5-713, 40-5-801, 40-5-802, 40-5-803, 40-5-804, 40-5-805, 40-5-806, 40-5-807, 40-5-808, 40-5-809, 40-5-810, 40-5-811, 40-5-812, 40-5-813, 40-5-814, 40-5-815, 40-5-816, 40-5-817, 40-5-818, 40-5-819, 40-5-820, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-825, 40-5-901, 40-5-906, 40-5-907, 40-5-908, 40-5-909, 40-5-910, 40-5-911, 40-5-921, 40-5-922, 40-5-923, 40-5-924, MCA

37.62.305 TELEPHONE COMMUNICATIONS (1) Due to the need for maintaining confidentiality of records, it is essential that the ~~CSED~~ CSSD confirm the identity of persons to whom information is provided. Because a telephone caller's identity cannot be verified, no telephone inquiries concerning confidential information will be accepted by the ~~CSED~~ CSSD.

AUTH: 40-5-202, MCA

IMP: 40-5-203, MCA

37.62.307 DISTRIBUTION OF COLLECTIONS (1) Except as provided in (2) and (6), collections of support from all sources including but not limited to the proceeds from writs of execution, support liens, state tax offsets, and lump sum

settlements will be distributed, to the extent the collection is sufficient, in the following sequence:

(a) to pay the current support obligation for the month in which the collection is made if current support has not previously been paid for that month to the obligee. However, if the obligee is a recipient of public assistance including Title IV-E foster care services, collections of current support shall be retained by the ~~CSED~~ CSSD for subsequent allocation according to applicable state and federal statutes and regulations;

(b) through (d) remain the same.

(2) When the ~~CSED~~ CSSD is collecting support arrears only, amounts shall be distributed to open ~~CSED~~ CSSD cases according to (1)(b) through (1)(d).

(3) After a distribution of support collections to the obligee is determined appropriate but before actual distribution is made, the ~~CSED~~ CSSD may intercept a portion of the collections, as authorized by ARM 37.62.501, to be applied towards recoupment of over-payments previously made to the obligee.

(4) When the ~~CSED~~ CSSD is providing services to two or more obligees of the same obligor:

(a) through (c) remain the same.

(5) Notwithstanding the provisions of (4) above:

(a) through (c) remain the same.

(d) a support payment received by an obligee directly from the obligor and turned over to the ~~CSED~~ CSSD for distribution under this section will not be distributed to any other obligee's case; and

(e) support collections made through a clerk of court or other public or private child support enforcement authority, who forwards the collection to the ~~CSED~~ CSSD, shall be distributed only to the obligor's case designated by the clerk of court or other authority. If the forwarded collection fails to include a designated specific case, the distribution provisions of (4) will apply.

(6) remains the same.

(7) Except as provided in (9) below, the ~~CSED~~ CSSD shall not distribute collections or any part of collections towards future support, even though the obligor may so direct, until all appropriate distributions under (1) and, if appropriate, (4) are made first.

(8) remains the same.

(9) For purposes of determining distribution under this rule, the effective date of a support collection shall be known as the date of collection.

(a) For collections made under an order to withhold income, the date of collection is the day the ~~CSED~~ CSSD receives the payment. However, if the support is withheld by the payor in a month when the payment is due, but the payment is received by the ~~CSED~~ CSSD in a month other than the month when due, the date of withholding is the date specifically reported by the payor in documentation accompanying the payment;

(b) Except as provided in (9)(c), when a collection is received in the mail directly from the obligor, the date of collection is the date that the ~~CSED~~ CSSD receives the payment;

(c) remains the same.

(d) In all other cases, the date of collection shall be the day the ~~CSED~~ CSSD receives the collection;

(10) and (11) remain the same.

AUTH: 40-5-202, MCA

IMP: 17-4-105, 40-5-202, MCA

### 37.62.309 INDEPENDENT SUPPORT ENFORCEMENT CONTRACTOR

(1) The ~~CSED~~ CSSD as provided in 40-5-264, MCA, is authorized to enter into cooperative agreements with any person, firm, corporation, association, political subdivision or other department of the state for the purpose of carrying out its duties under state law and Title IV-D of the Social Security Act. Under such agreements the ~~CSED~~ CSSD may designate independent support enforcement contractors whose powers and duties are defined by the terms of the contract.

(2) An independent support enforcement contractor shall be accountable publicly and to the ~~CSED~~ CSSD, and shall comply with the terms and conditions of the contract, as well as with all applicable federal and state laws, regulations and rules, including policies and procedures of the ~~CSED~~ CSSD for processing casework.

(3) The jurisdiction and authority of an independent support enforcement contractor shall be limited to the terms of the contract and in no event may such jurisdiction and authority exceed that of the ~~CSED~~ CSSD unless otherwise provided by law.

(4) In any action taken by an independent support enforcement contractor under the contract, the independent support enforcement contractor will inform all parties, their counsel or other representative, and the court or administrative hearing officer that such action is being undertaken as an independent support enforcement contractor. On all documents and forms bearing the name of the ~~CSED~~ CSSD the independent support enforcement contractor shall include a statement in bold type of the status of independent support enforcement contractor as an independent contractor.

AUTH: 40-5-202, MCA

IMP: 40-5-264, MCA

37.62.501 TERMS AND CONDITIONS (1) Under 40-5-203, MCA, the ~~CSED~~ CSSD will provide services to any obligee or obligor who files an application for services with the ~~CSED~~ CSSD. If public assistance was previously paid to an obligee, the ~~CSED~~ CSSD will continue to provide services to the obligee without need for an application. However, if the obligee refused or terminated continued services following the last payment of public assistance, the obligee must file an application. An application for services or an obligee's acceptance of continued services after termination of public assistance shall constitute the applicant's or obligee's agreement to the following terms and conditions.

(2) For the purposes of this rule, "customer" means any person or entity who applies for ~~CSED~~ CSSD services or who is receiving ~~CSED~~ CSSD services.

(3) To receive and to continue to receive CSED CSSD services under 40-5-205, MCA, a customer must:

(a) through (c) remain the same.

(d) upon request of the CSED CSSD, promptly provide any information, documents, statements, exhibits, and other materials which the CSED CSSD, in its judgment, may determine relevant to the case or which the CSED CSSD finds is a necessary predicate to taking any action in the case. The customer must promptly advise the CSED CSSD of any later changes or additions to the information and materials previously provided to the CSED CSSD;

(e) promptly advise the CSED CSSD in writing of any change of address or status, or any new information about the customer or other parties in the case, including changes in physical custody of the child, or of any adoption proceedings;

(f) cooperate with the CSED CSSD in appearing at the time and place requested for interviews, hearings, depositions, blood draws, and other called for appearances where the presence of the customer is necessary for preparing testimony and evidence, providing information, testifying as witness and similar case pertinent activities;

(g) to ensure accurate payment records, if the obligee is the customer, the customer must promptly turn over to the CSED CSSD all child support payments received from the obligor. If the obligor is the customer, the customer must pay child support through the CSED CSSD for subsequent distribution to the obligee;

(h) let the CSED CSSD know immediately if the customer or any other party initiates any action, whether judicial, administrative or private, which competes with, is an alternative to, is inconsistent with, or which may in any way affect the action the CSED CSSD is taking in the case;

(i) except for the information available through the CSED CSSD 's voice response unit (VRU) or the CSED CSSD 's online payment lookup web site, submit all requests for specific case information in writing to the CSED CSSD. In making any request for information, the customer must provide sufficient information to identify the customer as the person or entity entitled to receive the information.

(4) The CSED CSSD may collect any fees incurred and owing by a customer under 40-5-210, MCA, by offsetting the fees against any funds which may be distributable to the customer. However, if the amount being distributed is a current support payment, the offset will not exceed 10% of the payment.

(5) In some instances when the customer is the obligee, the customer may receive money to which the customer is not entitled. The CSED CSSD may make a written demand for repayment of the money from the customer. The customer's silence or failure to respond to the written repayment demand within 10 days of the demand shall be considered the customer's consent to recoupment of the money from any child support collection made on the customer's behalf. Recoupment shall be made by offsetting 10% of any current child support collection and by offsetting any additional child support collection made in excess of the current support obligation. If a customer contests the repayment demand, the CSED CSSD may file an action in the district court to establish and collect the amount.

(6) Because support orders are often expressed in terms other than in monthly payments and because they often provide for varying and inconsistent payment due dates, to simplify monitoring of payments and payment accounting, the

CSED CSSD may elect to annualize the obligations. When the obligation is annualized, the total support payments due for a 1 year period are divided into 12 equal monthly installments.

(7) A customer cannot specify which of the CSED CSSD services that customer may want to receive. The CSED CSSD will determine which services are appropriate and the timing and duration of those services in accordance with Title IV-D of the Social Security Act, and the regulations promulgated thereunder.

(8) CSED CSSD staff attorneys assigned to a case represent the CSED CSSD and no attorney-client relationship exists between the customer and the CSED CSSD attorney. At any hearing or in any action undertaken by the CSED CSSD, the customer may appear and be represented by independent counsel of the customer's own choice.

(9) When there are multiple or concurrent procedures and remedies, whether judicial or administrative, criminal or civil, federal or state, which may be applicable to the customer's case, the CSED CSSD, at its sole discretion, will determine which procedure and remedy to apply, including the sequence and timing of concurrent or consecutive actions.

(a) In determining which procedure or remedy to apply to an individual case, the discretion of the CSED CSSD will be guided by the totality of circumstances including the time and effort required, the resources of the CSED CSSD, the interest of the public at large and the needs of the child.

(10) The CSED CSSD may terminate services:

(a) remains the same.

(b) when the CSED CSSD is unable to locate the customer within a 30 calendar day period despite attempts to make contact by phone and at least one certified letter to the customer's last known address;

(c) when the customer fails to provide any information, documents or other materials requested under (2) of this rule and the CSED CSSD cannot take the next step in the case without the information, documents or materials;

(d) when the customer fails to cooperate with the CSED CSSD and the customer's cooperation is necessary to the action initiated by the CSED CSSD; and

(e) remains the same.

(11) The CSED CSSD will notify the customer in writing 60 calendar days prior to termination of services under (8)(b) through (e) of this rule, of the CSED CSSD's intent to terminate services. The CSED CSSD will not terminate services if the customer, within the notice period, reestablishes contact with the CSED CSSD, supplies the requested information, documents or materials or begins to cooperate with the CSED CSSD, whichever is appropriate. The CSED's CSSD's decision to terminate services is final and not subject to protest except as may otherwise be provided by law.

(a) If CSED CSSD services are terminated and if there is a change in circumstances which would permit the CSED CSSD to reactivate prior terminated services or initiate new or additional services, the former customer can reinstate services by filing a subsequent application with the CSED CSSD.

(12) The CSED CSSD does not guarantee or warrant the results of services.

(13) If the customer is the obligee, the customer agrees that the value of CSED CSSD services exceeds any interest that might have accrued on collections



that are held pending proof of validity, confirmation of funds, or possible adjustments from joint federal tax offsets, and thereby waives that interest. Joint federal tax offsets may be held up to six months pursuant to federal law.

AUTH: 40-5-202, MCA

IMP: 40-5-203, MCA

37.62.705 FEE SCHEDULE (1) As authorized by 40-5-210, MCA, the ~~CSED~~ CSSD adopts the following schedule:

- (a) remains the same.
- (b) for other actual costs and actual expenses incurred by the ~~CSED~~ CSSD in a judicial proceeding, as awarded by the court; and
- (c) and (2) remain the same.
- (3) Other fees assessed to the party or entity requesting the service are:
  - (a) for parent locate services, a fee of \$10.00 if the social security number of the person to be located is provided to the ~~CSED~~ CSSD, and \$14.00 if the social security number of the person to be located is not provided;
  - (b) remains the same.
  - (c) for photocopies of ~~CSED~~ CSSD files, records and other materials, for each page, a fee of \$.25.
  - (4) through (6) remain the same.

AUTH: 40-5-202, 40-5-210, MCA

IMP: 40-5-210, MCA

37.62.707 WAIVER OR DEFERENCE OF FEES (1) The ~~CSED~~ CSSD may not waive or defer any of the foregoing fees except to encourage expedient, informal dispositions.

AUTH: 40-5-202, 40-5-210, MCA

IMP: 40-5-210, MCA

37.62.901 ORGANIZATIONAL STRUCTURE (1) Within the ~~CSED~~ CSSD there is an independent hearings bureau. For the convenient classification and division of business, the hearings bureau is divided into two administrative units consisting of the administrative law judges (ALJs) and the office of the administrative law judge (OALJ).

(2) The ALJs are responsible for and preside over all hearings in ~~CSED~~ CSSD contested cases.

- (a) and (3) remain the same.

AUTH: 2-4-201, 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.903 ASSIGNMENT OF CASES TO ALJ, DISQUALIFICATION AND SUBSTITUTION (1) When a hearing is requested by a party to a contested case, the OALJ will allocate the case file to an ALJ. Except as provided in this rule, once a case is assigned to an ALJ, the case shall be the continuing responsibility of that ALJ until a final decision and order is entered and the time for judicial review has expired. If judicial review is filed, the ALJ will lose jurisdiction over the case and will regain jurisdiction only if the district court remands the case to the ~~GSED~~ CSSD for further proceedings.

(2) through (6) remain the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.905 UNIFORMITY, CONSISTENCY AND INDEPENDENCE

(1) remains the same.

(2) When there is no statute, case law or administrative rule directly pertinent to a particular contested issue, or when the law is unsettled, and to the extent the following are of general applicability and do not conflict with the rules for ex parte communication, the ALJ's discretion shall be guided by:

(a) written ~~GSED~~ CSSD policy directives; and

(b) the ~~GSED~~ CSSD policy and procedures manual.

(3) Notwithstanding (2), each ALJ has independent authority to hear and decide contested cases. Under the unique circumstances of a particular case and upon a showing of facts or law sufficient to rebut application of a particular policy, an ALJ may depart from established ~~GSED~~ CSSD policy. Any departure shall be supported by reasoned explanation.

(4) and (5) remain the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.909 CONTESTED CASE PROCEEDINGS, ANSWER OR RESPONSE AND REQUEST FOR HEARING (1) through (6) remain the same.

(7) The ~~GSED~~ CSSD will make hearing request forms consistent with this rule available for use by persons requesting a hearing. Except for a request for hearing that omits a mistake of fact required by (3), a timely request for hearing that is generally in compliance with this rule shall not be dismissed solely for failure to strictly satisfy the requirements of this rule.

(8) remains the same.

(9) Informal contact with the GSED CSSD or OALJ, whether written or oral, will not constitute a hearing request, and will not extend the time in which a hearing must be requested.

(10) The GSED CSSD, as the party initiating a contested case proceeding, does not need to request a hearing. If no other party requests a hearing, a default decision and order may be entered. However, if no other party requests a hearing, the GSED CSSD may at its discretion request a hearing.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.911 FILING AND PROOF OF SERVICE (1) Whenever a rule or statute requires or permits a request for hearing, motion, brief, responsive answer or other document relating to the hearing to be filed with the department or the GSED CSSD, the place of filing shall be the OALJ. The location, mailing address, email address, and fax number of the OALJ shall be provided on the contested case notice and on each order, subsequent notice or other document mailed by the OALJ to a party. Excluding legal holidays, the hours for filing papers are between 8:00 a.m. and 5:00 p.m., Monday through Friday. Any papers presented or delivered after 5:00 p.m. shall be stamped the next business day. All original papers shall be filed with the OALJ and not the ALJ.

(2) remains the same.

(3) Filing with the OALJ is effective upon actual receipt at the OALJ and not upon mailing. Filing with the OALJ does not constitute service on the GSED CSSD and service on the GSED CSSD does not constitute a filing with the OALJ.

(4) through (6) remain the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.913 PARTIES (1) Except as provided in (3), a party includes any person served with a GSED CSSD contested case notice.

(2) As the entity initiating the proceedings, the GSED CSSD is automatically a party in all contested case proceedings. However, the GSED CSSD, at its discretion, may limit its participation in the case. When the GSED CSSD does participate as a party, it will do so through a GSED CSSD caseworker or GSED CSSD attorney as provided in ARM 37.62.915.

(3) remains the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.915 REPRESENTATION (1) Any person appearing in a ~~CSED~~ CSSD proceeding may, at the person's own expense, be accompanied, represented and advised by an attorney.

(a) remains the same.

(b) If the attorney files a notice of appearance or signs and files a request for hearing or other responsive pleading with the OALJ in that contested case action, the attorney shall be designated as the attorney of record and all further communication, mailings and notices made in that contested case action will be directed to the attorney. However, the OALJ will mail or deliver copies of all decisions and orders to both the party and the party's attorney. If there is no attorney of record, the OALJ, ~~CSED~~ CSSD and other parties will make all communications directly to the party.

(c) An attorney of record may withdraw from a pending case, however the attorney shall give notice of the withdrawal to the OALJ, the ~~CSED~~ CSSD and all other parties. Upon receipt of notice the OALJ, the ~~CSED~~ CSSD and all other parties will redirect all subsequent communications to the party formerly represented by the attorney.

(d) through (3) remain the same.

(4) Through the use of pre-approved legal forms and written ~~CSED~~ CSSD policies and procedures, and under the ultimate direction of and in consultation with a ~~CSED~~ CSSD attorney, and consistent with rules 5.3 and 5.5 of the Montana Rules of Professional Conduct, a ~~CSED~~ CSSD caseworker may initiate, appear in and participate in a contested case. A caseworker's assertion in a contested case notice is sufficient to constitute the caseworker's authority to participate in the case. When in a particular case a mailing, service, or other communication with the ~~CSED~~ CSSD is required by these rules, the mailing, service, or other communication must be directed to the participating caseworker.

(5) At the discretion of the ~~CSED~~ CSSD, a ~~CSED~~ CSSD attorney may personally appear and taken an active role in a contested case at any phase of the proceedings. The ~~CSED~~ CSSD attorney may also cease taking an active role at any time. When a ~~CSED~~ CSSD attorney does appear in the case, the attorney will not need to file a notice of appearance or sign any pleading as provided in (1)(b). The ~~CSED~~ CSSD attorney's appearance is sufficient to establish the attorney's authority to provide counsel and representation. When requested by a ~~CSED~~ CSSD attorney appearing the case, all other parties shall direct all further communication, mailings and notices made in that case to the attorney.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.917 SERVICE OF SUBSEQUENT NOTICE, MOTIONS, BRIEFS, AND OTHER PAPERS (1) After service of a contested case notice, all subsequent notices including amendments to a contested case notice, motions, briefs and other papers pertaining to a pending administrative action must be served on all parties. Service may be made by regular U.S. mail, postage prepaid, addressed to each party at:

- (a) and (b) remain the same.
- (c) the address of the place where service of the original contested case notice was achieved, if the party's mailing address is not known to the ~~CSED~~ CSSD.
- (2) and (3) remain the same.
- (4) Service on the ~~CSED~~ CSSD does not constitute a filing with the OALJ and filing with the OALJ does not constitute service on the ~~CSED~~ CSSD.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA  
IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.919 NOTICE OF HEARING, SCHEDULING ORDER AND LOCATION OF HEARING (1) remains the same.

- (2) The notice of hearing and scheduling order shall:
  - (a) through (h) remain the same.
  - (i) inform the party that if the party does not have a telephone available for a telephone hearing, at the party's request, a telephone will be made available to the party at the nearest regional ~~CSED~~ CSSD office or at the public assistance office in the county where the party resides.
- (3) The time of the hearing will be during the ~~CSED~~ CSSD's regular business hours. The place of the hearing may be:
  - (a) and (b) remain the same.
- (4) The parties may agree to an in-person hearing in another location which is mutually convenient to all the parties and the ~~CSED~~ CSSD.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA  
IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.923 EXTENSIONS OF TIME AND CONTINUANCES (1) Because ~~CSED~~ CSSD contested cases must proceed on an expedited basis, requests for extensions of time and continuances are disfavored and shall not be routinely granted. Extensions of time and continuances will be granted only upon a showing of extraordinary circumstances beyond the party's control which will cause substantial prejudice to the party if the extension or continuance is not granted.

- (2) through (5) remain the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.925 AMENDMENTS (1) A contested case notice may be amended by the ~~CSED~~ CSSD at any time before an order is issued resolving the notice. Except when the notice is amended during hearing, the amended notice shall be served on all parties in accordance with ARM 37.62.917.

(a) through (d) remain the same.

(2) During a hearing a party may seek to offer evidence relating to new issues not raised in the contested case notice or in the party's response to the notice. With the express or implied consent of the parties, the contested case notice or response may be deemed amended to conform to evidence which is relevant and material to issues within the scope of the ~~CSED~~ CSSD's authority.

(3) If a party objects to evidence offered at a hearing on grounds that the evidence is not within the issues raised by the contested case notice or the response to the notice, the ALJ may allow the notice or response to be amended upon a showing that the evidence is relevant and material to issues within the scope of the ~~CSED~~ CSSD's authority. If the amendment causes a surprise element to be introduced during a hearing, the ALJ may recess or adjourn the hearing to enable the objecting party to meet, refute, or rebut such evidence and may also order the exchange of additional relevant information or exhibits. The hearing record shall remain open and the ALJ shall set a specific time and date for the hearing to be reconvened. When a hearing is reconvened, it will be for the limited purpose of allowing the objecting party to meet, refute or rebut the evidence submitted by surprise in the prior hearing. This remedy may be had in addition to, or in conjunction with, any other remedy provided by these rules.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.927 EVIDENCE (1) The evidence received and considered in ~~CSED~~ CSSD contested cases shall conform to the common law, the statutory rules of evidence and the provisions of 2-4-612, MCA.

(2) and (3) remain the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.929 OFFICIAL NOTICE (1) Official notice may be taken of:

- (a) and (b) remain the same.
  - (c) department and ~~CSED~~ CSSD organization, including administration, officers, personnel, official publications and official acts of the department and the ~~CSED~~ CSSD;
  - (d) remains the same.
  - (e) the records of other ~~CSED~~ CSSD proceedings;
  - (g) remains the same.
  - (h) written ~~CSED~~ CSSD policy directives;
  - (i) the ~~CSED~~ CSSD policy and procedures manual;
  - (j) remains the same.
  - (k) payment histories originated by the ~~CSED~~ CSSD or obtained from clerks of court, the child support agencies of other states or other public records sources, and ~~CSED~~ CSSD-prepared abstracts of those histories including computerized data compilations; and
  - (l) child support guidelines worksheets and similar documents, completed ~~CSED~~ CSSD case related forms, and other papers within the scope of the ~~CSED~~ CSSD's technical knowledge as a body of experts and within the scope of its duties, responsibilities and jurisdiction.
- (2) remains the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.933 INVESTIGATIVE SUBPOENA (1) The ~~CSED~~ CSSD may issue an investigative subpoena whenever the ~~CSED~~ CSSD has a right or duty to investigate any matter relating to the location of an obligor, the establishment of paternity and support orders, and the enforcement or modification of a support order. A contested case as defined in ARM 37.62.303 need not be initiated before an investigative subpoena is issued.

(2) and (3) remain the same.

(4) In addition to (3), when a person with a support order requests the ~~CSED~~ CSSD to review that order for a possible modification, the ~~CSED~~ CSSD may direct an investigative subpoena to a parent for the purpose of determining during the review process whether there is a sufficient change of circumstances to warrant commencement of formal modification proceedings.

(5) The investigative subpoena shall order the subpoenaed person or representative of the subpoenaed entity to appear before the ~~CSED~~ CSSD at a set time and produce the requested information and, if necessary, to permit the pertinent parts of the record and files to be inspected and copied. By mutual agreement between the ~~CSED~~ CSSD and the subpoenaed person or entity, the time, place and method for production of the information may be modified.

(6) The ~~CSED~~ CSSD shall issue an investigative subpoena only when the person who is the subject of the investigation fails to voluntarily provide the

information and the information is otherwise unavailable to the ~~CSED~~ CSSD through less intrusive means.

(7) and (8) remain the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.937 OTHER DISCOVERY (1) remains the same.

(2) Because ~~CSED~~ CSSD contested case proceedings are heard on an expedited basis, other discovery may unreasonably delay the hearing. For this reason other discovery may not be had except upon request. A request for other discovery must be made according to and within the time set by the ARM 37.62.919 scheduling order. When other discovery is requested, the OALJ will convene a discovery conference by telephone with all parties. At the conference the OALJ will establish dates for the accelerated completion of each phase of other discovery. Time tables for other discovery set out in the Montana Rules of Civil Procedure may be substantially shortened.

(a) remains the same.

(3) Without need for other discovery or subpoena, specific identifiable ~~CSED~~ CSSD records that are relevant to a disputed material fact, upon request and payment of any necessary copying fees, may be made available to a party unless the requested records are expressly exempt or protected from disclosure by state or federal law.

(4) through (8) remain the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.945 PROCEDURE AT HEARING (1) through (9) remain the same.

(10) The ALJ shall cause the hearing to be recorded at the ~~CSED~~ CSSD's expense. The ~~CSED~~ CSSD is not required to prepare a transcript at its own expense. Any interested person, at the person's expense, may request a typed transcription of the recording or may cause additional audio, video, or stenographic recordings to be made during the hearing if the making of additional recordings does not cause distraction or disruption.

(11) ~~CSED~~ CSSD hearings are open to public observation, except for the parts that the presiding ALJ declares to be closed pursuant to a provision of law authorizing closure. If the hearing is conducted by telephone, the availability of public observation is satisfied by allowing interested persons to observe and listen to the hearing at the location of any one of the participants or to listen to or inspect the audio tape record or to inspect any transcript obtained by the ~~CSED~~ CSSD.



AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.947 INTERPRETERS (1) Whenever a party or a witness is unable to understand or speak the English language, and the presiding ALJ determines that this inability may impair the substantial rights of any party to a fair hearing, the ALJ may adjourn the hearing and appoint ex parte an interpreter at the ~~CSED~~ CSSD's expense. The hearing will be reconvened after an interpreter is obtained.

(2) through (6) remain the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.949 PROPOSED DECISION, FINAL DECISION AND ORDER

(1) Following the close of hearing and the receipt of post-hearing briefs and other evidence ordered by the ALJ, the presiding ALJ shall prepare a proposed decision and order. Copies of the proposed decision and order shall be served on each party as provided in ARM 37.62.917. A proposed decision and order is interim in effect and does not become a final ~~CSED~~ CSSD decision and order except as provided in (2) of this rule and by ARM 37.62.951(6).

(2) The parties shall have 20 days following service of the proposed decision and order to review the order. At the end of the 20 days, the presiding ALJ may enact the proposed decision and order as a final ~~CSED~~ CSSD order unless a party, within the 20 day review period, files a motion to review the proposed order as provided by ARM 37.62.951. A decision and order that becomes final under this rule takes effect as to its terms on the date it is enacted. Copies of the final decision and order shall be delivered or mailed to each party, and to each party's attorney if any.

(3) Proposed and final decisions and orders must include findings of fact, conclusions of law and the policy reasons for the decision if the decision is based on an exercise of ~~CSED~~ CSSD discretion as referenced in ARM 37.62.905(1)(b).

(a) through (e) remain the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.951 MOTION TO REVIEW PROPOSED ORDER (1) through (5) remain the same.

(6) Upon receipt of a timely filed motion to review which specifies one or more of the grounds set out in (2), the presiding ALJ shall afford each party an opportunity to respond to the motion and, upon request, to present oral argument and submit written briefs on the matters raised by the motion. After considering the motion and the responses to the motion, the ALJ may affirm the proposed decision or correct, amend or modify it as necessary. If affirmed, the proposed order shall be enacted as a final ~~CSED~~ CSSD order. The enacted order takes effect as to its terms on the date it is enacted. If corrected, amended or modified, the ALJ shall issue a revised decision and order that is consistent with the proposed order as corrected, amended or modified. The revised decision and order shall be effective as a final ~~CSED~~ CSSD decision and order on the day it is signed by the ALJ. Copies of decisions and orders that become final under this rule shall be delivered or mailed to each party, and to each party's attorney if any.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.955 HEARING RECORD (1) remains the same.

(2) Except for parts of the file admitted as evidence during the hearing, the ~~CSED~~ CSSD case file maintained by the ~~CSED~~ CSSD caseworker, including computerized and hard copy versions, is not a part of the hearing record.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.959 INFORMAL DISPOSITION AND CONSENT ORDERS (1) The parties to a contested case may informally resolve the case, any motion concerning the case, or any issue pending resolution in the case, by stipulation, agreed settlement, or consent order. Except as provided in (3), all informal dispositions must be in writing and must be submitted to the presiding ALJ for review. The ALJ will review the matter for conformity with applicable law and for jurisdiction of the ~~CSED~~ CSSD to enter an order or resolve the matter based on the informal disposition. Upon concurrence the ALJ will make any appropriate order based on the informal disposition including dismissing or vacating any pending hearing.

(2) and (3) remain the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.965 DISMISSAL OF CONTESTED CASE OR WITHDRAWAL OF HEARING REQUEST (1) The ~~CSED~~ CSSD or a ~~CSED~~ CSSD staff attorney may ex parte dismiss a contested case proceeding at any time prior to entry of a final decision and order. A copy of the ex parte dismissal shall be served on all parties served with a contested case notice. The OALJ shall vacate any hearing that may be pending in the case. A dismissal under this rule is without prejudice and the ~~CSED~~ CSSD may initiate a new contested case proceeding at any time.

(2) remains the same.

(3) A scheduled hearing and a final decision and order may be vacated and dismissed at any time by the ALJ upon a showing that the ~~CSED~~ CSSD did not or does not have jurisdiction over the subject matter of the hearing or the final decision and order.

AUTH: 2-4-201, 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 2-4-201, 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.1101 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) remains the same.

(2) "File or file with the department" for the purposes of 40-5-414(1), MCA, means that the request for hearing must be delivered to and received by the ~~CSED~~ CSSD hearing office within the time specified by law.

(3) and (4) remain the same.

AUTH: 40-5-405, MCA

IMP: 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-405, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, MCA

37.62.1103 WITHHOLDING ENTITY (1) The ~~CSED~~ CSSD is hereby designated the "state disbursement unit" pursuant to 42 USC 666(b)(5).

AUTH: 40-5-405, MCA

IMP: 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-405, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, MCA

37.62.1105 VOLUNTARY WITHHOLDING (1) Notwithstanding the provisions of 40-5-412(2), MCA, the ~~CSED~~ CSSD may, at the request of the obligor, take steps to implement income withholding at any earlier time, in an amount determined in accordance with 40-5-416, MCA.

AUTH: 40-5-405, MCA

IMP: 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-405, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, MCA

37.62.1113 AVAILABILITY OF HARDSHIP ADJUSTMENTS (1) In certain circumstances, the amount of money required to be withheld to defray delinquent support amounts owed under the terms of the act may be temporarily reduced at the discretion of the ~~CSED~~ CSSD. Such a "hardship adjustment" may be made upon a showing that extraordinary costs or expenses for special medical, dental, and mental health needs have been incurred by the obligor or the obligor's dependents; that these costs are actually being paid by the obligor; and that the obligor is not being reimbursed by insurance. A hardship adjustment may also be based upon special costs or expenses which are directly related to the obligor's ability to earn income available for withholding, and which, if not paid by the obligor, would result in a major loss of income. Further, a hardship adjustment may be considered if the total income of the obligor's household only minimally meets the subsistence level for food, housing, clothing, and other necessities as established by the United States poverty guidelines.

(2) remains the same.

AUTH: 40-5-405, MCA

IMP: 40-5-416, MCA

37.62.1115 EFFECT OF HARDSHIP DETERMINATION (1) through (3) remain the same.

(4) Whenever the ~~CSED~~ CSSD has determined that a hardship adjustment is appropriate, it shall issue a withholding order, or a modification of an existing withholding order, which reflects the hardship adjustment. No order may be issued for the withholding of less than:

(a) the amount of current support plus the monthly hardship payment determined by the ~~CSED~~ CSSD if the obligor owes an ongoing current support obligation; or

(b) the monthly hardship payment determined by the ~~CSED~~ CSSD if the obligor's current support obligation has terminated.

(5) When the hardship adjustment ceases, the ~~CSED~~ CSSD may, without further notice to the obligor, modify or amend the order to withhold the amount of delinquent support determined to be proper prior to the hardship adjustment.

AUTH: 40-5-405, MCA

IMP: 40-5-416, MCA

37.62.1117 PROCEDURES FOR DETERMINING HARDSHIP ADJUSTMENTS (1) The ~~CSED~~ CSSD will use the following procedures as a guideline for the exercise of its discretion in determining hardship adjustments:

(a) remains the same.

(b) The review will be conducted ex parte by the ~~CSED~~ CSSD 's regional office based on financial information provided by the obligor or obtained from other sources.

(c) The standard for review will be the application of a formula developed by the ~~CSED~~ CSSD. The ~~CSED~~ CSSD will, upon request, provide copies of the formula to any interested person.

(d) The ~~CSED~~ CSSD will determine the length of time the hardship adjustment will continue. The hardship adjustment will terminate at the end of the determined period, or cessation of the hardship condition, whichever occurs first. In the event the hardship condition continues after the end of such period, it shall be the obligor's duty to request further review at that time.

(e) If the obligor disagrees with the ~~CSED~~ CSSD 's determination, a request may be made in writing for further review by the ~~CSED~~ CSSD division administrator or designee.

(f) and (g) remain the same.

AUTH: 40-5-405, MCA

IMP: 40-5-416, MCA

37.62.1122 DETERMINING UNENFORCEABLE CASE STATUS (1) This rule establishes the criteria which a IV-D case must satisfy to be categorized as unenforceable. All of the following criteria must be met:

(a) through (d) remain the same.

(e) the ~~CSED~~ CSSD has not identified any attachable financial institution accounts belonging to the obligor parent;

(f) the ~~CSED~~ CSSD has not identified any executable assets belonging to the noncustodial parent;

(g) and (h) remain the same.

AUTH: 40-5-203, MCA

IMP: 40-5-203, MCA

37.62.1303 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "~~CSED~~ CSSD " means the Child Support enforcement Services Division.

(2) "Financial hardship payment plan" means a plan offered to the obligor by the ~~CSED~~ CSSD for agreement which provides for monthly support arrears payments by the obligor in a lesser amount than under a standard payment plan and which, upon approval by the ~~CSED~~ CSSD office of the administrative law judge, stays further license suspension proceedings.

(3) remains the same.

(4) "Standard payment plan" means a plan offered to the obligor by the ~~CSED~~ CSSD for agreement which provides for monthly support payments by the obligor and which, upon approval by the ~~CSED~~ CSSD office of the administrative law judge, stays further license suspension proceedings.

AUTH: 40-5-713, MCA

IMP: 40-5-710, 40-5-713, MCA

37.62.1305 CRITERIA FOR STANDARD PAYMENT PLAN (1) A standard payment plan agreement must contain, but is not limited to, the following:

- (a) through (f) remain the same.
- (g) an agreement that a standard plan does not limit the ~~CSED~~ CSSD's right to pursue collection of the arrears by other means;
- (h) remains the same.
- (i) an agreement that the obligor gives up his or her right to have a district court review the decision of the ~~CSED~~ CSSD hearing officer.

AUTH: 40-5-713, MCA

IMP: 40-5-710, 40-5-713, MCA

37.62.1309 EFFECT OF FINANCIAL HARDSHIP PAYMENT PLAN DETERMINATION (1) A pending financial hardship payment plan determination does not stay or delay hearings on, or implementation of, license suspension, absent a stay or continuance issued by the ~~CSED~~ CSSD administrative hearing officer.

- (2) and (3) remain the same.
- (4) Whenever the ~~CSED~~ CSSD has determined that a financial hardship payment plan is appropriate, the ~~CSED~~ CSSD hearing officer shall consider the financial hardship payment plan and either approve or disapprove the plan.

AUTH: 40-5-713, MCA

IMP: 40-5-710, 40-5-713, MCA

37.62.1311 PROCEDURES FOR DETERMINING FINANCIAL HARDSHIP PAYMENT PLAN TERMS (1) The ~~CSED~~ CSSD will use the following procedures as a guideline for the exercise of its discretion in determining the payment terms of a financial hardship payment plan:

- (a) the obligor must request a financial hardship determination in writing to the ~~CSED~~ CSSD office issuing the notice of intent to suspend stating the reasons a hardship adjustment is appropriate. The ~~CSED~~ CSSD will determine if the obligor is eligible for a reduction of the amount which would normally be paid or withheld, under a standard payment plan, to defray the support delinquency and interest and fees, if any;
- (b) remains the same.
- (c) the ~~CSED~~ CSSD will determine the length of time the financial hardship determination will continue, based on the information provided by the obligor. The financial hardship payment plan will terminate at the end of the determined period, cessation of the financial hardship condition, or upon modification of the obligor's current/future support obligation, whichever occurs first. In the event the financial hardship condition continues after the end of such period, it shall be the obligor's duty to request further review prior to the date of expiration;
- (d) remains the same.

(e) if the obligor disagrees with the ~~CSED~~ CSSD's financial hardship determination, the license suspension process will proceed to hearing, if the obligor has timely requested a hearing pursuant to the requirements of 40-5-703, MCA.

AUTH: 40-5-713, MCA

IMP: 40-5-710, 40-5-713, MCA

37.62.1313 PROCEDURES AND CRITERIA FOR RESULTANT HARDSHIP

(1) The obligor must make a written claim for a resultant hardship to the ~~CSED~~ CSSD office of the administrative law judge. The obligor must mail a copy of claim to the ~~CSED~~ CSSD office issuing the notice of intent to suspend.

(2) remains the same.

AUTH: 40-5-713, MCA

IMP: 40-5-710, 40-5-713, MCA

37.62.1315 STAY OF LICENSE SUSPENSION

(1) A stay of a license suspension may be issued by the ~~CSED~~ CSSD office of the administrative law judge at any time subsequent to receipt in the ~~CSED~~ CSSD office of the administrative law judge of a written claim of resultant hardship or a written motion for a stay pending a financial hardship payment plan determination.

(2) The ~~CSED~~ CSSD office of the administrative law judge may issue an immediate stay if the hearing officer determines a reasonable chance of irreparable harm exists if a stay is not issued prior to a hearing on the resultant hardship claim or motion for a stay.

(3) remains the same.

AUTH: 40-5-713, MCA

IMP: 40-5-710, 40-5-713, MCA

37.62.1501 OFFSET OF STATE TAX REFUNDS AND OTHER PAYMENTS FOR DEBTS COLLECTED BY CHILD SUPPORT AGENCY

(1) The ~~CSED~~ CSSD will notify the Department of Revenue as provided for by 17-4-105, MCA, of any past due debt resulting from or relating to a child support obligation owing to or collected by the state under Title IV-D of the Social Security Act. The debt must have accrued through a written contract, court judgment, administrative order, or a distribution the recipient was not entitled to retain as described in 40-5-910, MCA, and shall be for a definite amount of money due and owing to or collected by the state under Title IV-D of the Social Security Act.

(2) and (3) remain the same.

AUTH: 17-4-105, MCA

IMP: 17-4-105, MCA

37.62.1703 ELECTRONIC REPORTS

(1) For the purpose of reporting a support debt to a consumer reporting agency, upon a request by a consumer

reporting agency, the ~~CSED~~ CSSD may provide such information by electronic means.

AUTH: 40-5-262, MCA

IMP: 40-5-261, MCA

37.62.1705 AMOUNTS TO BE REPORTED (1) The ~~CSED~~ CSSD will report to the consumer reporting agency only those support debts when:

(a) the amount of the debt retainable by the ~~CSED~~ CSSD for the reimbursement of assigned public assistance expenditures is an amount equal to at least seven times the monthly current support; or

(b) remains the same.

(2) Reports will be provided to a consumer reporting agency only upon request of an agency with whom the ~~CSED~~ CSSD has entered into an agreement which specifies the form and content of the reported information, and which imposes terms and conditions for the use of the information so as to protect its confidentiality.

AUTH: 40-5-262, MCA

IMP: 40-5-261, MCA

37.62.1901 PROVIDING INFORMATION (1) Whenever an obligor is required under 40-5-208, MCA to provide the ~~CSED~~ CSSD with information regarding health or medical insurance coverage, the obligor shall provide the information within 20 days following the receipt of a written request from the ~~CSED~~ CSSD. The information must be provided by a verified writing using a form provided by the ~~CSED~~ CSSD or a form provided by the obligor which contains essentially the same information.

(2) The request for health or medical insurance coverage information shall be deemed continuing, and the obligor must report changes in the information to the ~~CSED~~ CSSD within 20 days of the change.

(3) remains the same.

AUTH: 40-5-202, MCA

IMP: 40-5-208, MCA

37.62.1903 NOTICE TO OBLIGOR (1) If the ~~CSED~~ CSSD determines that an obligor failed to provide or maintain health or medical insurance coverage pursuant to statute or court or administrative order, or if the obligor fails to provide information concerning such coverage, or both, the ~~CSED~~ CSSD may cause to be served upon the obligor, a notice of such failure. The notice shall include:

(a) through (d) remain the same.

(e) a statement that the amount finally assessed will be subject to income withholding, warrant for distraint and other remedies available to the ~~CSED~~ CSSD to collect the assessed amount; and

(f) remains the same.

AUTH: 40-5-202, MCA



IMP: 40-5-208, MCA

37.62.2101 MODIFICATION OF SUPPORT ORDERS (1) The ~~CSED~~ CSSD may conduct a review for modification of a support order which it is enforcing upon a verified written application showing one or more of the criteria for review under 40-5-272, MCA.

(2) remains the same.

(3) The ~~CSED~~ CSSD may conduct a review for modification of a support order which it is enforcing upon receipt of documentation that the obligated parent will be incarcerated for more than 180 days. The results of this review may be abatement of any support due during the period of incarceration and for 60 days following the release from incarceration.

AUTH: 40-5-202, MCA

IMP: 40-5-226, MCA

37.62.2103 AVAILABILITY OF REVIEW (1) remains the same.

(2) The ~~CSED~~ CSSD will deny a request for review of a support order if any of the following conditions exist:

(a) remains the same.

(b) the ~~CSED~~ CSSD does not have an open IV-D case after the procedures in ARM 37.62.2107 have been completed;

(c) through (f) remain the same.

(g) the support order will terminate within six months after the date the request for review is received by the ~~CSED~~ CSSD.

AUTH: 40-5-202, MCA

IMP: 40-5-202, MCA

37.62.2105 HEARING ON DENIAL OF REVIEW REQUEST (1) When a review is denied under ARM 37.62.2103, the parent requesting the review has the right to request a hearing on whether the review was properly denied. The request for hearing shall be made to the ~~CSED~~ CSSD Office of the Administrative Law Judge, and must be received within 10 days after service of a notice denying the review request.

(2) The hearing shall be conducted in accordance with ~~CSED~~ CSSD rules at ARM 37.62.901, et seq., except that the hearing is not a contested case hearing, and therefore no judicial review is available. The scope of the hearing is limited to the ~~CSED~~ CSSD's decision rejecting the review request, and the order of the administrative law judge is not subject to ARM 37.62.949 regarding proposed orders.

AUTH: 40-5-202, MCA

IMP: 40-5-202, MCA

37.62.2107 PROCEDURE FOR TERMINATING REVIEW OR MODIFICATION AFTER CLOSURE OF IV-D CASE (1) If a IV-D case is closed while a review application or modification action is pending, the ~~CSED~~ CSSD will

mail notice to the party who did not open the IV-D case and offer that party the opportunity to apply for support enforcement services.

(2) If a new IV-D referral or an application for support enforcement services is not received by the ~~CSED~~ CSSD within 20 calendar days of the date the notice was received by the party, the modification notice will be dismissed or the review application denied.

(3) If a new IV-D referral or an application for support enforcement services is received by the ~~CSED~~ CSSD within 20 calendar days of the date the notice was received by the party, the action will continue from the point at which the IV-D case was closed.

(4) and (5) remain the same.

AUTH: 40-5-202, MCA

IMP: 40-5-202, MCA

37.62.2111 TIME FRAME DETERMINATIONS (1) For purposes of determining time frames in reviews and modifications conducted under this subchapter, the following provisions apply:

(a) a request for review is received when the ~~CSED~~ CSSD has sufficient information to determine if review is available under ARM 37.62.2103; or

(b) the ~~CSED~~ CSSD shall take no action on a review or modification while the procedures under ARM 37.62.2107 are being performed. The time provided for the performance of procedures under ARM 37.62.2107 shall not be counted in any determination of time frames.

AUTH: 40-5-202, MCA

IMP: 40-5-202, MCA

37.62.2113 REQUESTS FOR DISCOVERY (1) Requests for discovery by parties in administrative modification cases must be received in the ~~CSED~~ CSSD Office of the Administrative Law Judge on or before the 10th day after service of a Notice of Review of Child Support Order and Order to Produce Financial Information upon the party requesting discovery. The ~~CSED~~ CSSD may request discovery by including a discovery order within its notice of proposed modification.

(2) and (3) remain the same.

AUTH: 40-5-202, MCA

IMP: 40-5-202, 40-5-273, MCA

37.62.2119 MODIFICATION HEARING (1) through (4) remain the same.

(5) The order shall be effective the first day of the month following the issuance of the Notice of Proposed Modification, or as determined by a district court. If the modification result is a lowered child support obligation, all payments received during the pendency of the modification action shall be credited against the new obligation, and amounts exceeding the modified obligation shall be applied first to outstanding arrearages, fees, and fines. Any amount remaining after such credits shall be applied to future child support by reducing the amount of child support

collected under the new order for no more than six months, or before the order terminates, whichever comes first. Parties may agree to an alternate schedule. No refunds shall be available from the ~~CSED~~ CSSD.

AUTH: 40-5-202, MCA

IMP: 40-5-202, 40-5-272, 40-5-273, MCA

37.78.215 TANF: TANF CASH ASSISTANCE; CHILD SUPPORT ENFORCEMENT SERVICES COOPERATION REQUIREMENTS (1) through (6) remain the same.

(7) The local Office of Public Assistance will promptly notify the Child Support ~~Enforcement Services~~ Division of all cases in which it has been determined that there is good cause for refusal to cooperate in establishing paternity or obtaining child or medical support.

(8) and (9) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.1013 FAIM FOOD STAMP PROGRAM: UNEARNED INCOME EXCLUSIONS (1) The following kinds of unearned income are not counted in determining food stamp eligibility and benefit amount:

(a) through (c) remain the same.

(d) child support payments returned to the household by the department's Child Support ~~Enforcement Services~~ Division, up to \$50 per month.

AUTH: 53-2-201, 53-2-901, MCA

IMP: 53-2-901, 53-2-904, MCA

37.80.103 CONFIDENTIALITY (1) Use and disclosure of information is allowed only for the following purposes:

(a) through (c) remain the same.

(d) to assist the Child Support ~~Enforcement Services~~ Division or any other agency or entity authorized to conduct child support enforcement activities;

(e) through (2) remain the same.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 53-2-211, MCA

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) through (3) remain the same.

(4) If a parent of a child does not live with the child and is not paying child support under a child support order recognized by a Montana district court, the custodial parent must apply for and cooperate with child support ~~enforcement~~ services from the department's Child Support ~~Enforcement Services~~ Division. The department determines cooperation with Child Support ~~Enforcement Services~~ Division by maintaining an open case when a case can be established or by the

parent providing all appropriate requested documentation to Child Support ~~Enforcement Services~~ Division for them to open a child support case. A custodial parent who fails without good cause to apply for such services and to cooperate with the Child Support ~~Enforcement Services~~ Division will be decertified for benefits under this chapter as of the date of such failure. Good cause is defined as specified in ARM 37.78.215.

(5) through (12) remain the same.

AUTH: 40-4-234, 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, MCA

#### 37.82.416 ASSIGNMENT OF RIGHTS TO BENEFITS, COOPERATION WITH CHILD SUPPORT ~~ENFORCEMENT SERVICES~~ REQUIREMENTS

(1) through (3) remain the same.

(4) Individuals receiving medical assistance only in any of the following coverage groups are not required to assign their rights to medical support or cooperate with the Child Support ~~Enforcement Services~~ Division in establishing paternity and obtaining medical support:

(a) through (5) remain the same.

AUTH: 53-6-113, MCA

IMP: 53-2-612, 53-2-613, 53-6-131, MCA

#### 37.85.407 THIRD PARTY LIABILITY (1) through (5) remain the same.

(6) The department shall not deny payment of services solely because of the existence of a third party in the following circumstances:

(a) remains the same.

(b) The third party is an insurer under a health insurance policy provided by the absent parent of a recipient and that health insurance is obtained or maintained as a result of an enforcement action taken by the Child Support ~~enforcement Services~~ Division against that absent parent, if the following provisions are met:

(i) through (12) remain the same.

AUTH: 53-6-113, MCA

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

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.62.101 through 37.62.2121, 37.78.215, 37.78.1013, 37.80.103, 37.80.201, 37.82.416, and 37.85.407, pertaining to the Child Support Enforcement Division (CSED).

The above-listed rules have either Child Support Enforcement Division or CSED listed in the rule. Following a national trend, CSED proposes that the division name be amended to Child Support Services Division (CSSD). The removal of

"enforcement" from the division's name will increase the public's knowledge that the division provides a plethora of services. When the agency began in 1976, the only service it provided was enforcement of support obligations. Now the division offers services in paternity establishment, support order establishment, and review and adjustment of support and medical orders.

Arm 37.62.101 through 37.62.2121

The department proposes to amend these rules to reflect the change of the division name from Child Support Enforcement Division to Child Support Services Division. This proposal also includes changing the acronym from CSED to CSSD.

ARM 37.5.129, 37.78.1013, 37.80.103, 37.80.201, 37.82.416, and 37.85.407

These rules contain references to Child Support Enforcement Division and the acronym CSED. The department proposes to amend these rules to reflect the proposed new division title, Child Support Services Division (CSSD). The department also proposes that the addresses be updated.

Fiscal Impact

The department does not believe that the proposed rule amendments will have any fiscal impact.

The department intends to adopt these rule amendments retroactively to March 2, 2020. There is no negative impact to the affected parties by applying the rule amendments retroactively.

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., May 7, 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/ Andrew Betson  
Andrew Betson  
Rule Reviewer

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

Certified to the Secretary of State March 17, 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 37.82.402 pertaining to                ) PROPOSED AMENDMENT  
residency                                        )

TO: All Concerned Persons

1. On April 16, 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 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 <https://mt-gov.zoom.us/j/581563020>, meeting ID: 581 563 020;
- (b) Dial by telephone +1 406 444 9999 or +1 646 558 8656, meeting ID: 581 563 020, find your local number: <https://mt-gov.zoom.us/j/581563020>;
- (c) Join by SIP 581563020@zoomcrc.com;
- (d) Join by H.323 (Polycom) 162.255.37.11##581563020; or
- (e) Join by Skype for Business <https://mt-gov.zoom.us/skype/581563020>.

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

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

37.82.402 RESIDENCY (1) remains the same.

(2) Medicaid will be provided to otherwise eligible residents of Montana. The documents used to verify that an applicant is a resident of this state include, but are not limited to, electronic data sources permitted by federal and state law, driver's license, state identification card, mortgage or rental agreement, post office records, utility bill, and wage stub.

(a) through (3) remain the same.

AUTH: 53-6-113, MCA  
IMP: 53-6-131, 53-6-133, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.82.402 relating to State of Montana residency for Medicaid applicants.

The reasonable necessity for proposing the rule amendment is because Section 27 of House Bill 658, passed by the 2019 Legislature, requires the department to establish by rule the documents to be used to verify that an applicant for Montana Medicaid is a resident of this state. This rule notice proposes to verify an applicant's Montana residency using generally accepted documents that demonstrate an individual's intent to remain in the state permanently or for an indefinite time.

##### Fiscal Impact

This proposed rule amendment has an administrative cost of \$0.00 in state fiscal year (SFY) 2020 and \$0.00 in SFY 2021. In addition, the proposed changes will result in a projected cost savings of \$0.00.

The department intends to apply these proposed rule amendments to be effective April 1, 2020.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., April 24, 2020.

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

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

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



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

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

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

/s/ Nicholas Domitrovich for  
Brenda K. Elias  
Rule Reviewer

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

Certified to the Secretary of State March 17, 2020.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	AMENDED NOTICE OF PUBLIC
ARM 42.12.101, 42.12.106,	)	HEARING ON PROPOSED
42.12.130, 42.12.133, 42.12.209,	)	AMENDMENT AND
42.13.101, and 42.13.107, and the	)	REPEAL
repeal of ARM 42.12.207 pertaining	)	
to approval of a licensee without	)	
premises and concession	)	
agreements	)	

TO: All Concerned Persons

1. On March 13, 2020, the Department of Revenue published MAR Notice No. 42-1017 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 462 of the 2020 Montana Administrative Register, Issue Number 5.

2. 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 April 3, 2020. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or [todd.olson@mt.gov](mailto:todd.olson@mt.gov).

3. Governor Bullock issued an executive order on March 15, 2020, implementing Executive Orders 2-2020 and 3-2020 (Orders) providing for measures to combat the spread of COVID-19 Novel Coronavirus. The Orders can be accessed at: [http://governor.mt.gov/Portals/16/2020-03-15\\_Governor%20Directive%20re%20COVID-19.pdf?ver=2020-03-15-170323-930](http://governor.mt.gov/Portals/16/2020-03-15_Governor%20Directive%20re%20COVID-19.pdf?ver=2020-03-15-170323-930).

Based on the Orders, and to promote the positive efforts of this public health directive, the department has decided to reschedule the public hearing to Wednesday, May 6, 2020, at 11:00 a.m.

4. The department amends paragraphs 1, 2, and 6 of its proposal notice as follows:

1. On ~~April~~ May 6, 2020, at ~~4:30 p.m.~~ 11:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on ~~March 20~~ April 3, 2020. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

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 and must be received no later than 5:00 p.m. on ~~April~~ May 13, 2020.

/s/ Todd Olson

Todd Olson  
Rule Reviewer

/s/ Gene Walborn

Gene Walborn  
Director of Revenue

Certified to the Secretary of State March 17, 2020.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) AMENDED NOTICE OF PUBLIC  
Rules I through XIV pertaining to the ) HEARING ON PROPOSED  
Montana Economic Development ) ADOPTION  
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. 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 April 3, 2020. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or [todd.olson@mt.gov](mailto:todd.olson@mt.gov).

3. Governor Bullock issued an executive order on March 15, 2020, implementing Executive Orders 2-2020 and 3-2020 (Orders) providing for measures to combat the spread of COVID-19 Novel Coronavirus. The Orders can be accessed at: [http://governor.mt.gov/Portals/16/2020-03-15\\_Governor%20Directive%20re%20COVID-19.pdf?ver=2020-03-15-170323-930](http://governor.mt.gov/Portals/16/2020-03-15_Governor%20Directive%20re%20COVID-19.pdf?ver=2020-03-15-170323-930).

Based on the Orders, and to promote the positive efforts of this public health directive, the department has decided to reschedule the public hearing to Friday, May 8, 2020, at 1:30 p.m.

4. The department amends paragraphs 1, 2, and 5 of its proposal notice as follows:

1. On ~~April 8~~ May 8, 2020, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Fourth Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building. Visitors must check in at the customer service window on the third floor for access to the fourth floor.

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 ~~March 20~~ April 3, 2020. Please contact Todd Olson, Department of

Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than ~~April 30~~ May 29, 2020.

/s/ Todd Olson

Todd Olson  
Rule Reviewer

/s/ Gene Walborn

Gene Walborn  
Director of Revenue

Certified to the Secretary of State March 17, 2020.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On January 31, 2020, the Department of Agriculture published MAR Notice No. 4-20-264 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules on page 123 of the 2020 Montana Administrative Register, Issue Number 2.
2. The department has amended the above-stated rule as proposed.
3. The department has adopted the following rules as proposed: New Rules I (4.23.101), II (4.23.102), III (4.23.103), IV (4.23.104), and V (4.23.105).
4. No comments or testimony were received.

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Agriculture

Certified to the Secretary of State March 17, 2020.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption of a	)	NOTICE OF ADOPTION OF
Temporary Emergency Rule	)	TEMPORARY EMERGENCY RULE
amendment pertaining to Restricted	)	AMENDMENT
Weed Seeds	)	

TO: All Concerned Persons

1. The Montana Department of Agriculture is adopting the following emergency rule because yellow toadflax (*Linaria vulgaris*) is listed as a Priority 2B Noxious Weed (ARM 4.5.2019) and prohibited in seed (ARM 4.12.3010). Therefore, it is removed from the listing. Palmer amaranth is added to the listing as an invasive weed. It has not been detected in Montana but has the potential to be introduced through contaminated seed from out of state. Palmer amaranth has developed multi-modal herbicide resistance in other states and can contaminate agricultural seed in areas where it occurs which poses an imminent threat to Montana agricultural producers for the 2020 planting season. It is regulated as a noxious weed or prohibited plant in the states of Iowa, Ohio, Minnesota, North Dakota, South Dakota, Tennessee, Washington, and Wisconsin. The department recognizes that the hazard presented by Palmer amaranth to crop and forage production in Montana cannot be averted or remedied by any other administrative act. The economic impact of this rule will be to prevent the intentional shipment of palmer amaranth seeds and seed mix containing it into Montana. This will impact buyers and sellers but does not prevent them sending it elsewhere such as the southwest USA where it is not prohibited. The department has no way to know the exact financial impact, but it is assumed to be vastly lower than the cost of allowing palmer amaranth to become an established weed in Montana.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on April 10, 2020, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts, Helena, Montana, 59601; telephone (406) 444-3156; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov).

3. The temporary emergency rule amendment is effective March 17, 2020, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule amendment provides as follows, stricken matter interlined, new matter underlined:

4.12.3011 RESTRICTED WEED SEEDS (1) The name and number of restricted weed seed must be shown on the label. When the number of restricted weed seeds exceeds the allowance, the seed lot is prohibited for sale in Montana.

(2) Seeds offered for sale or sold shall not contain the following restricted weed seeds in quantities in excess of those listed below:

<u>Common Name</u>	<u>Species</u>	<u>No. of Seeds Per Pound</u>
(a) Quackgrass	(Agropyron repens)	0
(b) Perennial Sowthistle	(Sonchus arvensis)	0
(c) Wild Oats	(Avena fatua)	45
		of grass seed
		5
		of all other seed
(d) Dodder	(Cuscuta spp.)	9
(e) Curly Dock	(Rumex crispus)	45
(f) Jointed Goatgrass	(Aegilops cylindrica)	0
(g) Persian Darnel	(Lolium persicum)	9
		of grass seed
		0
		of all other seed
<del>(h) Yellow Toadflax</del>	<del>(Linaria vulgaris)</del>	<del>0</del>
<u>(h) Palmer Amaranth</u>	<u>(Amaranthus palmeri)</u>	<u>0</u>

AUTH: 80-5-139, MCA

IMP: 80-5-120, MCA

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

6. The department is filing MAR Notice No. 4-20-266, which addresses a public hearing on this same subject to adopt this rule as a permanent rule. That notice is also available in this issue of the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Cort Jensen at the address above. Any comments must be received no later than 5:00 p.m., April 30, 2020.

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 2 above or may be made by completing a request form at any rules hearing held by the department.

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



/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Department of Agriculture

Certified to the Secretary of State March 17, 2020.

BEFORE THE MONTANA BOARD OF HORSE RACING  
DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 8.22.2301, 8.22.2401,                )  
8.22.2701, 8.22.2813, 8.22.3001, and    )  
8.22.3901, pertaining to the Montana    )  
Board of Horse Racing                    )

TO: All Concerned Persons

1. On February 14, 2020, the Board of Horse Racing published MAR Notice No. 8-22-179 pertaining to the proposed amendment of the above-stated rules at page 227 of the 2020 Montana Administrative Register, Issue Number 3.
2. No comments or testimony were received.
3. The board has amended the above-stated rules as proposed.

/s/ Garrett Norcott  
Garrett Norcott  
Rule Reviewer

/s/ Tara Rice  
Tara Rice  
Director  
Department of Commerce

Certified to the Secretary of State March 17, 2020.

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

In the matter of the adoption of New     ) NOTICE OF ADOPTION  
Rule I pertaining to the procedural     )  
rules of the Coal Board                 )

TO: All Concerned Persons

1. On January 31, 2020, the Coal Board published MAR Notice No. 8-94-178 pertaining to the proposed adoption of the above-stated rule at page 127 of the 2020 Montana Administrative Register, Issue Number 2.

2. No comments or testimony were received.

3. The board has adopted NEW RULE I (8.101.204) as proposed.

/s/ Amy Barnes  
Amy Barnes  
Rule Reviewer

/s/ Tara Rice  
Tara Rice  
Director  
Department of Commerce

Certified to the Secretary of State March 17, 2020.

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

In the matter of the amendment of                    ) NOTICE OF AMENDMENT  
ARM 12.11.301 pertaining to                         )  
personal flotation devices                         )

TO: All Concerned Persons

1. On January 31, 2020, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-526 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 133 of the 2020 Montana Administrative Register, Issue Number 2.

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

3. No comments or testimony were received.

/s/ Zach Zipfel  
Zach Zipfel  
Rule Reviewer

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

Certified to the Secretary of State March 17, 2020.

BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On December 27, 2019, the Department of Corrections published MAR Notice No. 20-4-65 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 2290 of the 2019 Montana Administrative Register, Issue Number 24.

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

NEW RULE I (20.13.108) RENTAL VOUCHERS – OFFENDER ELIGIBILITY – RENTAL VOUCHER DISBURSEMENTS (1) through (9) remain as proposed.

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

(11) through (13) remain as proposed.

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

COMMENT #1: One comment was received from within the department concerning (10) of the proposed new rule. The commenter expressed concern about inclusion of the phrase "sanitary and habitable" in the definition of suitable housing on the grounds that the phrase could mistakenly imply that the department will perform or will require a landlord to obtain a formal, regulatory-quality inspection such as one that a sanitarian or building codes inspector might conduct.

RESPONSE #1: The comment is well-taken. The department is not qualified or mandated to conduct an inspection and determine whether a housing unit is sanitary or habitable in any formal or technical sense or in conformity with any regulatory standards. The department only has supervisory authority over offenders. The department considered substituting alternative language in (10) but has chosen to simply remove the phrase "sanitary and habitable" and not replace it. All alternative phraseology that the department considered presented either a risk of an offender's unwarranted reliance on the department to determine that a proposed housing unit is safe, or, a risk of discouraging landlords from making much-needed, serviceable housing units available on the market.

COMMENT #2: One commenter raised four concerns about the proposed new rule. First, the commenter stated that 46-23-1041(2), MCA, requires voucher monies be available to pay reentering offenders' substance abuse, mental health, and sex offender treatment expenses as well as educational and employment programming expenses. Second, the commenter stated that (5) of the proposed new rule unlawfully engrafts an eligibility criterion onto the statutory criteria by limiting the amount of rental voucher funds to the price of a one-bedroom unit when two-bedroom units might be more common in the rental market. Third, the commenter deemed (9) of the proposed new rule to conflict with 46-23-1041, MCA, because nothing in the statute makes persons re-entering the community from pre-release centers ineligible for rental voucher assistance. Fourth, the commenter expressed a general concern that the proposed new rule is contrary to the legislative intent set in 46-23-1040(3), MCA, regarding supportive housing grants and the department's responsibility to coordinate with local government and agencies to identify all available housing options.

RESPONSE #2: The department appreciates the opportunity to respond to each of the commenter's concerns. RESPONSE to FIRST CONCERN: The commenter appears to misapprehend the purpose of 46-23-1041, MCA, as a whole and (2) in particular. Rental voucher assistance is only available to a re-entering offender who will be engaged in community programming of the types set out in 46-23-1041(2), MCA, which are intended to diminish the likelihood of recidivism. Rental vouchers only provide the reentering offenders with housing for a limited time while they are availing themselves of the community programming. Once offenders re-enter the community, they can apply for Medicaid assistance for substance abuse and mental health treatment services, or, if employed, private insurance may be available to meet those needs. Other resources outside of the department's programs may be available to meet education and vocational training needs of eligible persons. Section 46-23-1041, MCA puts a box around the legislative appropriation to implement that statute, i.e., funds are available solely for rental assistance for so long as appropriated funding is available for that purpose. RESPONSE to SECOND CONCERN: Rental voucher assistance is based on an offender's financial circumstances while still in confinement. Once eligibility is established prior to release in accordance with the rule, the one-bedroom rental rate becomes irrelevant and rental voucher assistance will issue in the amount of the re-entering offender's actual rent. RESPONSE to THIRD CONCERN: As stated in the rule, pre-release is

a residential program lasting, on average, 200 days. Pre-release center (PRC) participants work in the community at their jobs. Their circumstances are distinguishable from the financial circumstances of offenders still in confinement. Only the latter group of offenders is eligible for rental voucher assistance under 46-23-1041, MCA. RESPONSE to FOURTH CONCERN: The comment is not primarily directed at or related to the proposed new rule. The public has expressed confusion about supportive housing grants as distinguished from rental voucher assistance and so the department will address the comment to that extent. Both the supportive housing grant program and the rental voucher program were created by SB 65 in the 2017 legislative session. The supportive housing grant program was codified in Title 44, chapter 7, MCA under the jurisdiction of the Montana Board of Crime Control. The supportive housing grant program was funded by the 2017 Montana Legislature and grants were awarded by the board. No grant funds were provided for the supportive housing grant program in the 2019 legislative session. By contrast, the rental voucher program was codified in Title 46, chapter 23, part 10, MCA in 2017 under the jurisdiction of the Montana Department of Corrections, Probation and Parole Division. The rental voucher program was not funded by the Montana Legislature in 2017, but a general appropriation was provided to the department in the 2019 legislative session (HB 2) to fund the rental voucher program. No grant funds are involved in the rental voucher program. The remainder of the commenter's fourth concern is outside the scope of this rulemaking and is not addressed.

/s/ Colleen Ambrose  
Colleen Ambrose  
Rule Reviewer

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

Certified to the Secretary of State March 17, 2020.

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

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

TO: All Concerned Persons

1. On November 8, 2019, the Public Safety Officers Standards and Training (POST) Council published MAR Notice No. 23-13-257 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1940 of the 2019 Montana Administrative Register, Issue Number 21. The council held a public hearing on the proposed rules on December 18, 2019.

2. The POST Council has amended ARM 23.13.102, 23.13.206, 23.13.207, 23.13.208, 23.13.209, 23.13.210, 23.13.212, and 23.13.703 as proposed.

3. The POST Council has amended ARM 23.13.215 and 23.13.702 as proposed, but with the following changes from the original proposal, new matter underlined and deleted matter interlined:

23.13.215 FIREARMS PROFICIENCY STANDARDS (1) through (4) remain as proposed.

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

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

(2) The public safety officer's employing authority must report to the executive director any ~~potential ground~~ substantiated grounds for denial, sanction, suspension, or revocation of POST certification as enumerated in (3). If review of an officer's conduct is pending before any court, council, tribunal, or agency, the employing authority may wait for a final adjudication before reporting the officer's conduct to the executive director. If the officer's conduct results in termination of the officer's employment, the notice requirements of 7-32-303, MCA, and ARM 23.13.216 apply.

(3) through (3)(d) remain as proposed.



(e) conviction of a ~~misdemeanor or felony~~ criminal offense enumerated in Title 45, chapters 5 through 10, MCA or Title 61, chapter 8, part 4, MCA, or an offense which would be a ~~misdemeanor or felony~~ criminal offense enumerated in Title 45, chapters 5 through 10, MCA or Title 61, chapter 8, part 4, MCA if committed in this state;

(f) ~~conviction of any offense involving unlawful sexual conduct or unlawful physical violence;~~

(g) through (n) remain as proposed but are renumbered (f) through (m).

(4) remains as proposed.

4. The POST Council has thoroughly considered the comments and testimony received. Copies of the written comments were provided to the Council and will be provided to the public on request. A summary of the comments received and the department's responses are as follows:

COMMENTS 1-5: Steve Ette of Gallatin Court Services provided written comment regarding the proposed changes to ARM 23.13.102. Andrea Lower of Gallatin Court Services testified concerning the proposed changes to ARM 23.13.102. Gloria Soja of Lewis and Clark County Criminal Justice Services Department testified and provided written comment jointly with Kellie McBride of Lewis and Clark County Criminal Justice Services Department regarding the proposed change to ARM 23.13.102. Jon Metropoulos of Missoula Correctional Services, Inc. also provided testimony concerning the proposed changes to ARM 23.13.102. All individuals commented that "Misdemeanor Probation Officer" and "Pretrial Services Officer" should be separately defined because they have different jobs. Additionally, they commented that the discipline should be renamed "pretrial services/misdemeanor probation officer" in ARM 23.13.206 through 23.13.215 to avoid confusion regarding whether pretrial services officers supervise pretrial felony defendants. Representatives from Lewis and Clark County Criminal Justice Services Department and Gallatin Court Services provided proposed language for the definitions of "Misdemeanor Probation Officer" and "Pretrial Services Officer."

RESPONSE TO COMMENTS 1-5: "Misdemeanor Probation Officer" is defined in statute. The terms "Misdemeanor probation officer" and "Pretrial services officer" do not appear individually in POST's rules, and therefore the terms require no definition for the purposes of reading POST's rules. POST is not attempting to define specific types of officers in a discipline but the discipline as a whole. For example, POST has not provided definitions for "deputy sheriff" or "game warden" because these types of officers fall under the overarching discipline of "peace officer," although their jobs are likely quite different.

COMMENTS 6-8: Sue Wilkins, Dan Cederberg, and Jon Metropoulos of Missoula Correctional Services, Inc. provided written comment regarding POST's proposed changes to ARM 23.13.215. Mr. Metropoulos also provided testimony regarding POST's proposed changes to ARM 23.13.215. Missoula Correctional Services, Inc. opposes POST requiring pretrial services and misdemeanor probation officers to complete annual firearms proficiency training before being eligible to make an arrest.

RESPONSE TO COMMENTS 6-8: The council recognizes that officers with arrest authority may use any force necessary to effect an arrest. This includes the use of firearms. The council, however, has removed (5)'s previous requirement that an officer meet the firearms proficiency requirements annually. Missoula Correctional Services, Inc. concludes that its officers can safely effect an arrest without the use of firearms. Officers making an arrest who do not also carry a firearm, like those working for Missoula Correctional Services, Inc., will therefore not be required to meet the annual firearms proficiency requirements. Because (1) already requires all officers to meet the firearms proficiency requirements once per year if they are authorized to carry a firearm, the stricken language is duplicative when applied to officers who carry a firearm.

COMMENTS 9-14: Frank DiFonzo, Chief of the Sidney Police Department, Deputy Chief Mark Kraft of the Sidney Police Department, Steve Crawford, Chief of the Bozeman Police Department and representative for the Montana Association of Chiefs of Police, and Jon Metropoulos of Missoula Correctional Services, Inc. provided testimony opposing the proposed changes to ARM 23.13.702. Deputy Chief Kraft, Chief Crawford, Mr. Metropoulos, Justin Jenness, Chief of the Lewistown Police Department, and Sergeant Rick Miller of the Livingston Police Department provided written comment opposing the proposed changes to ARM 23.13.702. Chief Crawford opposes a requirement that minor traffic offenses be reported to POST. Chief DiFonzo testified that employing authorities should be required to report only felony convictions. Chief Jenness and Sgt. Miller commented that POST is exceeding its authority by requiring agencies to report misconduct. Deputy Chief Kraft commented that the employing agencies should be trusted to determine what should happen to its officers and that it should not be decided by POST.

RESPONSE TO COMMENTS 9-14: Pursuant to statute, POST "shall ... provide for the ... suspension or revocation of certification of public safety officers." The council has the authority to adopt rules to implement this statutory obligation. The employing authorities in Montana have the statutory responsibility to apply the Montana POST Council's standards. The council finds that reporting violations of its standards is the responsibility of the employing authority. In response to the comments, POST has amended (2) to require reporting only after the employing authority has substantiated an allegation and to allow the employing authority to delay a report if the officer is challenging or grieving a finding. POST amended (3)(e) to narrow the criminal conduct that must be reported. With the amendments to (3)(e), (3)(f) became duplicative and unnecessary. POST therefore deleted (3)(f).

/s/ Hannah Tokerud  
Hannah Tokerud  
Rule Reviewer

Sheriff Tony Harbaugh  
Chairman  
Public Safety Officers Standards  
and Training Council

By: /s/ Perry Johnson  
Perry Johnson  
Bureau Chief  
Public Safety Officer Standards and  
Training Bureau

Certified to the Secretary of State March 17, 2020.

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

In the matter of the adoption of	)	NOTICE OF ADOPTION OF
Temporary Emergency Rules I	)	TEMPORARY EMERGENCY RULES
through IV pertaining to	)	
unemployment insurance benefits	)	
related to the COVID-19 pandemic	)	

TO: All Concerned Persons

1. The Department of Labor and Industry is adopting the following emergency rules for the following reasons:

A. 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.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 14, 2020, Governor Steve Bullock extended the emergency in the State of Montana with regards the COVID-19 pandemic in Executive Order 3-2020.

D. The Commissioner of Labor and Industry finds that under the emergency circumstances of the COVID-19 pandemic, there is an immediate peril to the public health, safety, and welfare, due to employer's needs to make sure that employees showing symptoms consistent with COVID-19 contagion are not present at the workplace, and help ensure that the recommendations of medical professionals and public health authorities that persons showing symptoms consistent with COVID-19 contagion self-quarantine for specified periods be followed, without employees losing all income as a result of those actions. The commissioner further finds that there is imminent peril to the public welfare, as expressed in the public policy of the State of Montana by 39-51-102, MCA, that widespread temporary layoffs by employers will cause serious economic harm to employees who are not paid during periods of layoffs caused by the COVID-19 pandemic.

E. There is reasonable necessity to immediately adopt temporary emergency rules for unemployment insurance purposes in order to protect the public health, safety, and welfare, because of the emergency conditions of the COVID-19 pandemic. There is reasonable necessity to immediately adopt temporary emergency rules pursuant to 10-3-104, MCA, affecting the operation of the state unemployment insurance program. There is reasonable necessity to immediately adopt temporary emergency rules to ensure that the state unemployment insurance program prevents the harm of widespread unemployment due to the COVID-19 pandemic for the reasons stated by the public policy expressed in 39-51-102, MCA.

2. The temporary emergency rules are effective March 17, 2020, when this rule notice is filed with the Secretary of State.

3 The text of the temporary emergency rules provides as follows:

NEW RULE I EMERGENCY DEFINITIONS RELATED TO COVID-19 CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS The following definitions only apply upon when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(1) "COVID-19" means the pandemic respiratory disease caused by coronavirus SAR -CoV-2, or mutations of that coronavirus.

(2) "COVID-19 quarantine" means that the claimant has received advice from a medical doctor or a public health authority recommending or requiring that the individual be isolated from others:

(a) for a period of up to 14 days in order to determine whether or not the individual has been exposed to the pathogens that cause COVID-19; or

(b) while the individual is infectious with COVID-19.

(3) "Family member" means a person residing in the same household as the claimant, and includes a partner or family member as defined in 45-5-206, MCA.

AUTH: 10-3-104, 39-51-302, MCA

IMP: 10-3-104, 39-51-102, MCA

NEW RULE II EMERGENCY RULE RELATED TO COVID-19 CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS (1) This rule is only effective when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) A claimant directed by the employer to leave work or not report for work due to the employer's response to the COVID-19 pandemic, including COVID-19 induced reduction in demand or availability of materials, is deemed to have been temporarily laid off by the employer.

(3) A claimant subject to a COVID-19 quarantine is deemed to be laid off by the employer during the period of the quarantine.

(4) A claimant who is a caregiver of a family member who is the subject of a COVID-19 quarantine is deemed, in order to further the public health, safety, and welfare, to also be subject to a COVID-19 quarantine.

(5) When a claimant has experienced a temporary layoff due to the COVID-19 pandemic, pursuant to (2), (3), or (4), the claimant is deemed to be able, available, and seeking suitable work when:

(a) the employer intends to recall the claimant to work at the end of the temporary layoff; and

(b) the claimant intends to return to work when recalled by the employer and takes reasonable measures to maintain contact with the employer.

(6) A claimant laid off as the result of being subject to a COVID-19 quarantine is ineligible for benefits if the claimant refuses work that can be performed while complying with the terms of the quarantine.

(7) 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.

(8) An employer is relieved of charges arising from a COVID-19 layoff and paid pursuant to emergency NEW RULES I through IV.

AUTH: 10-3-104, 39-51-302, MCA

IMP: 10-3-104, 39-51-102, MCA

NEW RULE III EMERGENCY RULE RELATED TO UNEMPLOYMENT INSURANCE DEADLINES ARISING DURING A DECLARED EMERGENCY OR DISASTER RELATED TO COVID-19 PANDEMIC (1) This rule is only effective upon when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) The department may find that good cause exists for late filings due to the circumstances of the COVID-19 pandemic.

(3) The department may extend the time for an employer to file wage reports and pay unemployment insurance contributions as is reasonable and appropriate to the circumstances of the COVID-19 pandemic.

AUTH: 10-3-104, 39-51-302, MCA

IMP: 10-3-104, 39-51-102, MCA

NEW RULE IV REGULAR UNEMPLOYMENT INSURANCE RULES TO BE CONSTRUED TO GIVE EFFECT TO EMERGENCY RULES RELATED TO COVID-19 PANDEMIC (1) This rule is only effective when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) The department shall apply its usual unemployment insurance rules in a manner that is consistent with emergency NEW RULES I through IV and in way that carries out the intent of emergency NEW RULES I through IV to provide unemployment benefits to employees who are laid off due to the COVID-19 pandemic through no fault or control of their own.

AUTH: 10-3-104, 39-51-302, MCA

IMP: 10-3-104, 39-51-102, MCA

4. The rationale for the temporary emergency rules is as set forth in paragraph 1.

5. A standard rulemaking procedure will be undertaken prior to the expiration of these temporary emergency rules.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive

notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

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

/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 March 17, 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 24.138.206 dental hygienist	)	ADOPTION
committee, 24.138.301 definitions,	)	
24.138.406 functions for dental	)	
auxiliaries, 24.138.502 initial licensure	)	
of dentists by examination, 24.138.503	)	
initial licensure of dental hygienists by	)	
examination, 24.138.2302	)	
unprofessional conduct for denturists,	)	
and the adoption of New Rule I	)	
denturist scope of practice – dentures	)	
over implants	)	

TO: All Concerned Persons

1. On January 17, 2020, the Board of Dentistry (board) published MAR Notice No. 24-138-77 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1 of the 2020 Montana Administrative Register, Issue No. 1.

2. On February 7, 2020, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the February 14, 2020, deadline.

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

COMMENT 1: One commenter asserted that dental assistants/auxiliaries, under ARM 24.138.406, should be allowed to apply silver diamine fluoride.

RESPONSE 1: The board has discussed the application of silver diamine fluoride extensively in prior rule packages and board meetings. Auxiliaries may place silver diamine fluoride under direct supervision and the requested change is outside the scope of this rulemaking project.

COMMENT 2: Two commenters questioned the ability of dental assistants under ARM 24.138.406 to perform other functions including placing rubber dams and coronal polishing. The commenters believed these functions to be within their expertise.

RESPONSE 2: Placement of rubber dams and coronal polishing may still be done under direct supervision. The board concluded that it would not normally be necessary to have a dentist delegate placing rubber dams or coronal polishing to an



assistant/auxiliary without being present on site. The board is declining to make further changes to the rule regarding these dental assistant functions.

COMMENT 3: One commenter stated that the board lacks the statutory authority to limit assistants from providing impressions under ARM 24.138.406.

RESPONSE 3: Pursuant to 37-4-408, MCA, and the delegation under 37-4-205, MCA, the board maintains wide authority to identify those functions which dental auxiliaries/assistants may undertake as those specific activities are not identified by statute.

COMMENT 4: Numerous commenters supported the rule changes in ARM 24.138.406 except for (7)(g). The commenters noted that it is standard practice within orthodontic and general dentistry practices for dental assistants, operating under direct supervision, to take intraoral scans or impressions. Commenters suggested the board amend the rule to remove orthodontic appliances and clarify the provisions by stating that delivery of orthodontic appliances meant to move teeth upon implementation should/can be done by an assistant/auxiliary under direct supervision.

RESPONSE 4: Following review and consideration of all comments, and due to concerns raised by the comments, the board decided not to proceed with the proposed new language of ARM 24.138.406(7)(g) at this time. The board anticipates conducting further discussions to address the issues raised by the comments. Additionally, given the lack of clarity between defining study and working casts, the board is not proceeding with the proposed striking of "or working" from (3)(c). In discussions, the board could not agree on the meaning of "study cast" versus "working cast" and concluded that assistant/auxiliary's practice should not be limited at this time solely to study casts under a dentist's direct supervision. The board is amending the rest of ARM 24.138.406 exactly as proposed.

COMMENT 5: Several commenters supported NEW RULE I as proposed.

RESPONSE 5: The board appreciates all comments received during the rulemaking process and believes the new rule protects public safety while allowing all parties to continue serving the public.

COMMENT 6: Multiple commenters supported NEW RULE I and stated their understanding that NEW RULE I is not to prohibit denturists from fitting partial dentures but is instead directed at fixed dentures. The commenters further believed that denturists can generally refer to dentists for evaluation of the viability of a denture candidate.

RESPONSE 6: As the board discussed in the December 6, 2019, and March 6, 2020, meetings, NEW RULE I is intended to prohibit denturists from fitting fixed dentures and similar prosthodontic devices over implants, not implant-retained partial dentures which are removable by the patient and soft-tissue supported. Also,

the new rule is not intended to prohibit denturists from referring patients to a dentist for a consultation about whether implants would be appropriate for the patient. The board did not intend to prohibit a denturist from simply telling a potential patient that they may consult with a dentist regarding whether implants are an option. The board determined that, with the requirement of a written referral from a dentist and other protections in NEW RULE I, the public safety will be preserved while allowing denturists to practice their trade.

COMMENT 7: One commenter strongly opposed NEW RULE I and stated that the board should not limit the practice of dental assistants/auxiliaries while simultaneously allowing denturists to work with implant patients in any capacity.

RESPONSE 7: The board is responsible under Montana law for the licensing, certification, registration, and conduct of licensees and for the protection of the public welfare. The board believes that the proposed changes regarding dental auxiliary and denturist practices appropriately protect public health and safety, while allowing those licensees to practice their respective trades.

4. The board has amended ARM 24.138.206, 24.138.301, 24.138.502, 24.138.503, and 24.138.2302 exactly as proposed.

5. The board has adopted New Rule I (24.138.906) exactly as proposed.

6. The board has amended ARM 24.138.406 with the following changes, stricken matter interlined, new matter underlined:

24.138.406 FUNCTIONS FOR DENTAL AUXILIARIES (1) through (3)(b) remain as proposed.

(c) taking impressions for study or working casts;

(d) through (7)(f) remain as proposed.

(g) taking final impressions of the involved arch for crowns, bridges, implant prosthesis, partial dentures, or complete dentures, ~~orthodontic appliances, sleep apnea appliances, or bruxism appliances;~~

(h) through (13) remain 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 March 17, 2020.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF ADOPTION  
RULE I pertaining to federal-state )  
poultry grading service – shell eggs )

TO: All Concerned Persons

1. On February 14, 2020, the Department of Livestock published MAR Notice No. 32-19-302 pertaining to the proposed adoption of the above-stated rule at page 305 of the 2020 Montana Administrative Register, Issue Number 3.
2. The department has adopted NEW RULE I (ARM 32.12.109) as proposed.
3. No comments or testimony were received.

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

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

Certified to the Secretary of State March 17, 2020.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 32.8.101 pertaining to )  
definitions and adoption of Grade A )  
pasteurized milk ordinance and )  
associated documents )

TO: All Concerned Persons

1. On February 14, 2020, the Department of Livestock published MAR Notice No. 32-19-306 pertaining to the proposed amendment of the above-stated rule at page 307 of the 2020 Montana Administrative Register, Issue Number 3.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

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

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

Certified to the Secretary of State March 17, 2020.

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

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 37.86.3607 pertaining to an        )  
increase in rates and billing practices    )

TO: All Concerned Persons

1. On February 14, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-910 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 310 of the 2020 Montana Administrative Register, Issue Number 3.

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

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

COMMENT #1: One commenter asked if the department awarded different contracts for the five regional RFPs, would there be less economies of scale and increased administrative costs by the state and contractors to administer multiple contracts.

RESPONSE #1: The department believes this question is outside the scope of this rulemaking notice.

COMMENT #2: One commenter asked if there is sufficient funding for Developmental Disabilities Targeted Case Management (DD TCM) for five different contractors, one per region, even though the DD TCM system has \$1.0 million less funding per year as compared to Fiscal Year 2017.

RESPONSE #2: The funding increase from House Bill (HB) 680 from the 2019 Legislature is a two-year additional funding source to the HB 2 appropriation, which then goes into the base thereafter. The department feels there is sufficient funding.

4. The department intends to apply these rules retroactively to March 1, 2020. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Nicholas Domitrovich  
Nicholas Domitrovich  
Rule Reviewer

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

Certified to the Secretary of State March 17, 2020.

VOLUME NO. 57

OPINION NO. 5  
March 18, 2020

Stephen A. Gannon  
Chouteau County Attorney  
P.O. Box 459  
Fort Benton, MT 59442

Dear Mr. Gannon:

You have requested my opinion on the following question:

Must the county sheriff deposit the fees for concealed weapons permits in either a designated account with the county treasury or the general fund of the county treasury depending on the intended use of those fees?

In preparing this Opinion, I have considered the analysis in your Legal Memorandum accompanying your request for an Attorney General Opinion and written comments received in response to a draft opinion circulated by my office.

1. Background

The administration of granting concealed weapon permits (CWP) lies with county sheriffs. See Mont. Code Ann. § 45-8-321 to 45-8-325. "The fee for issuance of a permit is \$50. The permit must be renewed for additional 4-year periods upon payment of a \$25 fee for each renewal . . . ." *Id.* § 45-8-322(2). Additionally, a county sheriff may charge \$5 for fingerprinting to conduct the mandatory background check. *Id.* § 45-8-322(4). County sheriffs are permitted to retain these fees for the purpose of implementing CWP statutes. *Id.* § 45-8-322(5) ("Permit, background, and fingerprinting fees may be retained by the sheriff and used to implement 45-8-321 through 45-8-325."). This statute is silent on how CWP fees are to be held pending their use in implementing CWP statutes. According to your request for an Attorney General Opinion, prior to 2009, the Chouteau County Sheriff deposited CWP fees into a designated county treasury revenue account. Since then, however, the Chouteau County Sheriff has deposited all CWP fees into a bank account not controlled by the county. Recently, this process was flagged in an audit resulting in your request.

2. The Law of Collection of Fees by County Officers in Montana

County sheriffs have a legal duty to collect CWP fees and implement CWP statutes. *Id.* § 45-8-321 to 45-8-325. Accordingly, these tasks are an official service of the office and may not be held by the officer for their personal use. See, e.g., *Platz v. Hamilton*, 653 P.2d 144, 201 Mont. 184 (1982) (holding because a county clerk of court had no statutory obligations concerning passport applications and voluntarily chose to execute passport applications, the clerk was not required to remit the passport fees to the county treasurer); 49 Mont. A.G. Op. 12 (2001) (holding "[a] sheriff may receive compensation from a federal agency under the terms of a

cooperative law enforcement agreement where the services rendered by the sheriff fall outside of his or her 'official duties' . . . ."); 45 Mont. A.G. Op. 14 (1993) (holding "[a] full-time County Attorney serving as city attorney pursuant to an interlocal agreement may not personally receive a fee from a private company for work performed on a city-county bond issue. Attorney fees so paid should be remitted to the county general fund."); 43 Mont. A.G. Op. 75 (1990) (holding the preparation of abstracts of instruments recorded in their offices is an official service and clerks may not personally retain compensation for performing these tasks).

Fees collected for an official service or duty are controlled by Mont. Code Ann. § 7-4-2511(1). This statute provides general guidance on how fees collected by county officers in their official capacity are to be processed and deposited:

Each salaried county officer shall charge and collect for the use of the county and pay into the county treasury by the 10th day in each month *all fees* allowed by law, paid or chargeable in *all cases*, except as provided in 25-10-403. This subsection does not apply to the compensation received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in the sheriff's custody.

(Emphasis added.) This statute thus covers all fees collected by county officers—including sheriffs—unless expressly excepted. See Mont. Code Ann. § 7-32-2141 (mandating the county sheriff to deposit other fees into the general fund of the county treasury as required by Mont. Code Ann. § 7-4-2511).

None of the exceptions to Mont. Code Ann. § 7-4-2511(1) apply here. The exception for mileage reimbursements does not apply, and the exception in Mont. Code Ann. § 25-10-403 allowing sheriffs to receive payments from "[e]ach party to a civil action" does not apply. "A civil action is prosecuted by one party against another for the enforcement or protection of a right or the redress or prevention of a wrong." Mont. Code Ann. § 27-1-103; see also *Messenger v. Board of Comm'rs*, 19 Wyo. 309 117 P. 126 (1911) (finding fees paid to sheriffs for performing horse inspections could not be personally retained because it was not a service performed in civil cases and constituted a duty "for the protection of the public against fraud or crime . . . ."). Because none of the exceptions apply, CWP fees must be paid into the county treasury by the 10th day in each month.

Montana Code Annotated § 7-4-2511(2) then discusses the specific use and accounting of collected funds:

Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the *sole use of the county* and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the *general fund* of the county.

(Emphasis added). Because CWP fees "may be retained by the sheriff and used to implement" CWP statutes, Mont. Code Ann. § 45-8-322(5), these fees fall within the "[u]nless otherwise provided" language of Mont. Code Ann. § 7-4-2511(2). Therefore, CWP fees are not required to be for the sole use of the county and credited to the general fund so long as the fees are used to implement the CWP statutes.

Nevertheless, CWP fees are still subject to the requirements of Mont. Code Ann. § 7-4-2511(1) and must be paid into the county treasury by the 10th day of each month. To ensure that these CWP fees intended to implement CWP statutes are not mixed with the county's general fund, they should be deposited in a separate and distinct account within the county treasury for that purpose. See Mont. Code Ann § 7-6-2111("The county treasurer shall . . . keep books so that the amounts received and paid out on account of separate funds or specific appropriations are exhibited *in separate and distinct accounts*, with the whole receipts and expenditures shown in one general or cash account . . .") (emphasis added). This process does not require the disclosure of individual CWP applicants' information to the county treasurer. See Mont. Code Ann. § 45-7-322(7) ("All of the information on the application is confidential, and the sheriff shall treat the confidential information on the application as confidential criminal justice information . . ."). If a county treasurer required additional information about the CWP fees collected in a county, a county sheriff would only have to provide generalized information about the revenue attributable to CWP applications. CWP fees may also accumulate year after year until the funds are used to implement CWP statutes. See Mont. Code Ann. § 45-8-322(5) (providing no time limit on period of retention of CWP fees).

The use of "retained" does not undercut this analysis. Under Mont. Code Ann. § 45-8-322(5), "[p]ermit, background, and fingerprinting fees may be *retained* by the sheriff and used to implement 45-8-321 through 45-8-325." (Emphasis added.) Retain means to "[t]o hold in possession or under control; to keep and not lose, part with, or dismiss." *Retain*, Black's Law Dictionary (10th ed. 2014). Montana Code Annotated § 45-8-322(5) should not be read in isolation. The Montana courts will "harmonize statutes relating to the same subject in order to give effect to each statute." *State v. Brendal*, 2009 MT 236, ¶ 18, 351 Mont. 395, 213 P.3d 448. Allowing sheriffs to retain control of CWP fees, while at the same time following the general requirements for handling fees collected by county officials, does not result in conflict.

Although sheriffs do not have physical possession of these fees when they deposit these fees over into a separate and distinct account within the county treasury, they still maintain control over these fees to implement CWP statutes and the fees are not mixed with the general fund. By creating these overlapping statutes, the Legislature has provided independent verification by the county treasurer that CWP fees are strictly used to implement the CWP program. Mont. Const., Art. VIII § 12 ("The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities."); *State ex rel. Erwin v. Warren*, 124 Mont. 378, 381, 224 P.2d 142, 143 (1950) ("When fees are imposed the presumption is that they are for the benefit of the state and when a salaried officer receives fees, he is receiving them as an agent



of the state."); see *also* Mont. Code Ann. § 7-6-2111 ("The county treasurer shall . . . receive all money belonging to the county and all other money directed to be paid to the treasurer by law, safely keep the money, apply and pay the money out, and *account for the money as required by law . . .*") (emphasis added). This process guarantees that CWP fees are not put to personal or unlawful use. See Mont. Code Ann. § 7-4-2511(2) ("A salaried county officer may not receive for the officer's own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered.").

THEREFORE, IT IS MY OPINION:

Montana law requires CWP fees be deposited in a separate and distinct account within the county treasury by the 10th day in each month if the county sheriff intends to use these fees to implement CWP statutes. If CWP fees are not used to implement CWP statutes, then these fees must be deposited into the general fund of the county by the 10th day in each month.

Sincerely,

/s/ Timothy C. Fox  
TIMOTHY C. FOX  
Attorney General

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

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

#### **Economic Affairs Interim Committee:**

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

#### **Education and Local Government Interim Committee:**

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

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

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

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

**Environmental Quality Council:**

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

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

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

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

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

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

### Definitions:

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

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

### Use of the Administrative Rules of Montana (ARM):

Known  
Subject

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

Statute

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

## RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2019. This table includes notices in which those rules adopted during the period October 4, 2019, through March 13, 2020, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2019, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2019 and 2020 Montana Administrative Registers.

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

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## 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 February 2020 appear. Potential vacancies from April 1, 2020 through June 30, 2020, are also listed.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of March 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 FEBRUARY 2020**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Environmental Review</b>			
Mr. Jeremiah C. Lynch	Governor	Hornbein	2/14/2020
Missoula			1/1/2023
Qualifications (if required): Public Member			
<b>Board of Regents of Higher Education</b>			
Mr. Paul Tuss	Governor	Reappointed	2/14/2020
Havre			2/1/2027
Qualifications (if required): District 2, Democrat			
<b>Board of Speech-Language Pathologists and Audiologists</b>			
Mrs. Diane Lynette Simpson	Governor	Hart-Paulson	2/14/2020
Fort Shaw			12/31/2022
Qualifications (if required): Speech-Language Pathologist			
<b>Board of Veterans Affairs</b>			
Mr. Ryan B. Beston	Governor	Backbone	2/28/2020
Poplar			8/1/2023
Qualifications (if required): Tribal Government Representative			
Mr. Mitch Godfrey	Governor	Erickson	2/28/2020
Bozeman			8/1/2022
Qualifications (if required): Region 2 Veteran			

**EXECUTIVE BRANCH APPOINTEES FOR FEBRUARY 2020**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Veterans Affairs Cont.</b>			
Mr. Richard A. Juvik Helena	Governor	Reappointed	2/28/2020 8/1/2023
Qualifications (if required): Veterans at-large			
Mr. Paul Little Light Hardin	Governor	Boyd	2/28/2020 8/1/2023
Qualifications (if required): Tribal Member, Honorably Discharged			
Mr. Michael Allen Stone Bigfork	Governor	Willing	2/28/2020 8/1/2023
Qualifications (if required): Training, education, or experience related to veterans' issues			
Mr. Leonard Garrett Swartz Missoula	Governor	Sorensen	2/28/2020 8/1/2023
Qualifications (if required): Training, education, or experience related to veterans' issues			
Ms. Brenda York Belgrade	Governor	Reappointed	2/28/2020 8/1/2022
Qualifications (if required): Training, education, or experience related to veterans' issues			

**EXECUTIVE BRANCH APPOINTEES FOR FEBRUARY 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</b>			
Mr. Lee Hazelbaker	Governor	Caniglia	2/28/2020
Belgrade			7/1/2022
Qualifications (if required): Non-disabled, engaged in a business			
<b>Eastern Montana Elder Justice Council</b>			
Ms. Denise Armstrong	Governor	None Stated	2/14/2020
Billings			12/31/2020
Qualifications (if required): Senior advocacy			
Mr. Tom Barleson	Governor	None Stated	2/14/2020
Helena			12/31/2020
Qualifications (if required): Law Enforcement/Investigator			
Ms. Marcy Brookie	Governor	None Stated	2/15/2020
Roundup			12/31/2020
Qualifications (if required): Senior advocacy			
Mr. Neil Brunett	Governor	None Stated	2/14/2020
Helena			12/31/2020
Qualifications (if required): Director or Designee of the Commissioner of Securities and Insurance			

**EXECUTIVE BRANCH APPOINTEES FOR FEBRUARY 2020**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Eastern Montana Elder Justice Council Cont.</b>			
Mr. Todd Buchanan Billings	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required): Licensed Certified Financial Planner			
Ms. Renee Buhmann Miles City	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required): Private financial institution			
Mr. Gary Connelley Billings	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required): Licensed private attorney			
Sheriff Allen Fulton Forsyth	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required): Law Enforcement			
Ms. Margaret Gallagher Billings	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required): County Attorney			
Mr. Wyatt Arthur Glade Miles City	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required): County Attorney			

**EXECUTIVE BRANCH APPOINTEES FOR FEBRUARY 2020**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Eastern Montana Elder Justice Council Cont.</b>			
Mr. Michael Hagenlock Helena	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required):	Director of the DPHHS Ex-Officio		
Mr. Tom Kuntz Red Lodge	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required):	Community leader		
Mr. Brett Lapham Billings	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required):	Law Enforcement/Investigator		
Mr. Mike Larson Billings	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required):	Co-Chair and Senior Advocate		
Mr. Chris McConnell Helena	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required):	Director of the Dept. of Justice Ex-Officio		
Mr. Chuck Munson Helena	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required):	Co-Chair & Director of the Dept. of Justice Ex-Officio		

**EXECUTIVE BRANCH APPOINTEES FOR FEBRUARY 2020**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Eastern Montana Elder Justice Council Cont.</b>			
Ms. Tammy Peltomaa Helena	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required): Director of the Dept. of Administration, Ex-Officio			
Mr. Al Ward Helena	Governor	None Stated	2/14/2020 12/31/2020
Qualifications (if required): Senior Advocate			
<b>Montana Arts Council</b>			
Mr. Gary B. Carson Townsend	Governor	Reappointed	2/14/2020 2/1/2025
Qualifications (if required): Keen interest in one or more of the arts			
Mr. Sean Falcon Chandler Harlem	Governor	Reappointed	2/14/2020 2/1/2025
Qualifications (if required): Keen interest in one or more of the arts			
Mr. Mark Kuipers Missoula	Governor	Reappointed	2/14/2020 2/1/2025
Qualifications (if required): Keen interest in one or more of the arts			

**EXECUTIVE BRANCH APPOINTEES FOR FEBRUARY 2020**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Arts Council Cont.</b>			
Representative Angela Russell Lodge Grass	Governor	Montague	2/14/2020 2/1/2025
Qualifications (if required): Keen interest in one or more of the arts			
Mr. Corby Skinner Billings	Governor	Parisot	2/14/2020 2/1/2023
Qualifications (if required): Keen interest in one or more of the arts			
Ms. Jean Steele Hamilton	Governor	Reappointed	2/14/2020 2/1/2025
Qualifications (if required): Keen interest in one or more of the arts			
<b>Public Employees' Retirement Board</b>			
Ms. Terri Lynn Hogan Helena	Governor	McKenna	2/28/2020 4/1/2022
Qualifications (if required): Public Employee			
Mr. Aaron L. Pratt Helena	Governor	Tuttle	2/28/2020 4/1/2024
Qualifications (if required): Public Employee			

**EXECUTIVE BRANCH APPOINTEES FOR FEBRUARY 2020**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Historic Preservation Officer</b>			
Mr. Peter Brown	Governor	Baumler	2/3/2020
Helena			1/1/2021
Qualifications (if required): Nominee of the Montana Historical Society			
<b>State Rehabilitation Council</b>			
Mr. Thomas F. Sullivan	Governor	Kriskovich	2/14/2020
Missoula			10/1/2021
Qualifications (if required): Representative of individuals with disabilities			
Ms. Sandra Lynne Taylor	Governor	Tavary	2/14/2020
Billings			10/1/2022
Qualifications (if required): Parent Training and Information Center			
<b>Water Pollution Control Advisory Council</b>			
Mr. Mark Allen Fix	Governor	Cole	2/28/2020
Miles City			1/1/2021
Qualifications (if required): Irrigated Agriculture Representative			



**EXECUTIVE BRANCH VACANCIES – APRIL 1, 2020 THROUGH JUNE 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Board of Architects and Landscape Architects</b> Mr. Bayliss Ward, Bozeman Qualifications (if required): Licensed Architect	Governor	4/1/2020
<b>Board of Clinical Laboratory Science Practitioners</b> Mr. Troy Krieger, Billings Qualifications (if required): Clinical Laboratory Science Practitioner who holds an active license	Governor	4/1/2020
<b>Board of Hail Insurance</b> Mr. Gary D. Gollehon, Brady Qualifications (if required): Public member and will serve as Presiding Officer	Governor	5/1/2020
<b>Board of Nursing Home Administrators</b> Ms. Kathryn Beaty, Hamilton Qualifications (if required): Nursing Home Administrator	Governor	6/1/2020
<b>Board of Optometry</b> Mr. Randall Hoch, Lewistown Qualifications (if required): Registered Optometrist	Governor	4/1/2020
<b>Board of Plumbers</b> Mr. Jeffrey Gruizenga, Billings Qualifications (if required): Registered professional engineer qualified in mechanical engineering	Governor	5/1/2020

**EXECUTIVE BRANCH VACANCIES – APRIL 1, 2020 THROUGH JUNE 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Board of Real Estate Appraisers</b>		
Mr. Thomas G. Stevens, Missoula Qualifications (if required): Licensed or certified real estate appraiser	Governor	5/1/2020
Mr. Gregory Anthony Thornquist, Helena Qualifications (if required): Licensed or certified real estate appraiser	Governor	5/1/2020
<b>Board of Realty Regulation</b>		
Ms. Julie Lingle Gardner, Missoula Qualifications (if required): Licensed Real Estate Broker, salesperson, or property manager	Governor	5/1/2020
<b>Board of Regents of Higher Education</b>		
Mr. John Randall Miller, Missoula Qualifications (if required): Student Regent	Governor	6/30/2020
<b>Equal Pay for Equal Work Task Force</b>		
Director Sheila Hogan, Helena Qualifications (if required): State Agency Director	Governor	4/1/2020
Representative Diane Sands, Missoula Qualifications (if required): Elected Official	Governor	4/1/2020

**EXECUTIVE BRANCH VACANCIES – APRIL 1, 2020 THROUGH JUNE 30, 2020**

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

**EXECUTIVE BRANCH VACANCIES – APRIL 1, 2020 THROUGH JUNE 30, 2020**

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

**EXECUTIVE BRANCH VACANCIES – APRIL 1, 2020 THROUGH JUNE 30, 2020**

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

**EXECUTIVE BRANCH VACANCIES – APRIL 1, 2020 THROUGH JUNE 30, 2020**

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

**EXECUTIVE BRANCH VACANCIES – APRIL 1, 2020 THROUGH JUNE 30, 2020**

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

**EXECUTIVE BRANCH VACANCIES – APRIL 1, 2020 THROUGH JUNE 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Information Technology Managers Council</b>		
Mr. Jason Emery, Missoula	Governor	4/1/2020
Qualifications (if required): Local Government Representative		
<b>Mental Disabilities Board of Visitors</b>		
Mr. Dan Laughlin, Anaconda	Governor	6/30/2020
Qualifications (if required): Experience with treatment and welfare of children with serious emotional disturbances		
Mr. Jeffrey Folsom, Helena	Governor	6/30/2020
Qualifications (if required): Experience with treatment and welfare of adults with developmental disabilities		
Ms. Amy Camille Tipton, Edgar	Governor	6/30/2020
Qualifications (if required): Treatment and welfare of adults with serious disabling mental illness		
<b>Montana Heritage Preservation and Development Commission</b>		
Dr. Timothy Lehman, Billings	Governor	5/1/2020
Qualifications (if required): Montana Historian		
Mr. Jeffery Ewelt, Billings	Governor	5/1/2020
Qualifications (if required): Member of tourism advisory council		
Mr. Andrew J. Poole, Helena	Governor	5/1/2020
Qualifications (if required): Public at large		



**EXECUTIVE BRANCH VACANCIES – APRIL 1, 2020 THROUGH JUNE 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Montana Pulse Crop Committee</b>		
Mr. Paul Kanning, Flaxville Qualifications (if required): Member from an eastern district	Governor	6/30/2020
Mrs. Jillien Streit, Chester Qualifications (if required): Member from a western district	Governor	6/30/2020
<b>Montana Wheat and Barley Committee</b>		
Mr. Alan Klempel, Bloomfield Qualifications (if required): (R) Farmer deriving an income growing wheat or barley from District VII	Governor	6/1/2020
Mr. Michael V. O'Hara, Fort Benton Qualifications (if required): (D) Farmer deriving an income growing wheat or barley from District VII	Governor	6/1/2020
<b>Noxious Weed Management Advisory Council</b>		
Mr. Joel Farkell, Brady Qualifications (if required): Consumer group	Governor	6/30/2020
Mr. Brian Ostwald, Joliet Qualifications (if required): Eastern county representative	Governor	6/30/2020

**EXECUTIVE BRANCH VACANCIES – APRIL 1, 2020 THROUGH JUNE 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Noxious Weed Management Advisory Council Cont.</b>		
Ms. Margie Edsall, Alder Qualifications (if required): At-Large Member from the agriculture community	Governor	6/30/2020
Mr. Jack Eddie, Dillon Qualifications (if required): Montana Weed Control Association	Governor	6/30/2020
Ms. Jeanette Nordahl, Joliet Qualifications (if required): Recreationist, wildlife group	Governor	6/30/2020
<b>State Library Commission</b>		
Ms. Anne Kish, Twin Bridges Qualifications (if required): Public Representative	Governor	6/1/2020
Mrs. Aaron LaFromboise, Browning Qualifications (if required): Public Representative	Governor	6/1/2020

**EXECUTIVE BRANCH VACANCIES – APRIL 1, 2020 THROUGH JUNE 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Task Force on Integrity in Wage Reporting and Employee Classification</b>		
Lt. Governor Mike Cooney, Helena Qualifications (if required): Chair	Governor	6/30/2020
Commissioner Galen Hollenbaugh, Helena Qualifications (if required): Commissioner of the Department of Labor and Industry	Governor	6/30/2020
Mr. Mario Valdez Martinez, Great Falls Qualifications (if required): Representative from organized labor	Governor	6/30/2020
Ms. Kimberly Rickard-Smeltzer, Townsend Qualifications (if required): Representative from organized labor	Governor	6/30/2020
Mr. Doug Jackson, Missoula Qualifications (if required): Representative from the construction community	Governor	6/30/2020
Mr. Jack McBroom, Unknown Qualifications (if required): Representative from organized labor	Governor	6/30/2020
Ms. Deborah Poteet, Missoula Qualifications (if required): Representative from the construction contractor community	Governor	6/30/2020
Director Gene Walborn, Helena Qualifications (if required): Director of the Department of Revenue	Governor	6/30/2020
Mr. Bob Warren, Columbia Falls Qualifications (if required): Representative from the construction contractor community	Governor	6/30/2020

**EXECUTIVE BRANCH VACANCIES – APRIL 1, 2020 THROUGH JUNE 30, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Task Force on Wage Reporting and Employee Classification in the Construction Industry</b> Commissioner Tom Lopach, Helena Qualifications (if required): Commissioner of Labor and Industry	Governor	6/30/2020

MONTANA ADMINISTRATIVE  
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**COREY STAPLETON**  
SECRETARY OF STATE

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