

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 print 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) 444-2055.

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BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 8.94.3727 pertaining to the	)	PROPOSED AMENDMENT
administration of the 2013-2014)	
Federal Community Development)	
Block Grant (CDBG) Program)	

TO: All Concerned Persons

1. On May 1, 2013 at 9:00 a.m., the Department of Commerce will hold a public hearing in Room 504A of the Park Avenue Building at 301 South Park Avenue, Helena, Montana, 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 Department of Commerce no later than 5:00 p.m. on April 26, 2013, to advise us of the nature of the accommodation that you need. Please contact Jennifer Olson, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2773; fax (406) 841-2771; TDD (406) 841-2702; or e-mail jeolson@mt.gov.

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

8.94.3727 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE ~~2011-2012~~ 2013-2014 CDBG PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Community Development Block Grant Program FFY 2012 Application Guidelines for Housing and Public Facilities Planning Grants; the FFY 2011 Application Guidelines for the Community Development Block Grant Economic Development Program as amended April 2012; the FFY 2012 Application Guidelines for the Community Development Block Grant Economic Development Program; the Montana Community Development Block Grant Economic Development Program FFY 2011 Application Guidelines for Planning Projects; the Montana Community Development Block Grant FFY 2011 Application Guidelines for the Neighborhood Stabilization Program (NSP); the Montana Community Development Block Grant Program and Neighborhood Stabilization Program (NSP) FFY 2012 Grant Administration Manual published as rules for the administration of the CDBG and NSP programs; and the Montana Community Development Block Grant Program FFY ~~2012~~ 2013 and FFY 2014 Application Guidelines for Public Facilities Projects and the FFY ~~2012~~ 2013 and FFY 2014 Application Guidelines for Housing and Neighborhood Renewal Projects.

- (2) The rules incorporated by reference in (1) relate to the following:
- (a) policies governing the program;
 - (b) requirements for applicants;
 - (c) procedures for evaluating applications;
 - (d) procedures for local project start up;
 - (e) environmental review of project activities;
 - (f) procurement of goods and services;
 - (g) financial management;
 - (h) protection of civil rights;
 - (i) fair labor standards;
 - (j) acquisition of property and relocation of persons displaced thereby;
 - (k) administrative considerations specific to public facilities, housing and neighborhood renewal, economic development, and neighborhood stabilization projects;
- (l) project audits;
 - (m) public relations;
 - (n) project monitoring; and
 - (o) planning assistance.

(3) Copies of the Application Guidelines and Grant Administration Manual adopted by reference in (1) can be viewed on the department's web site at <http://comdev.mt.gov/default.mcp>x or <http://cdbged.mt.gov/draftguidelines.mcp>x, or may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-1-103, MCA

IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule because the federal regulations governing the state's administration of the FFY 2013 and FFY 2014 Community Development Block Grant Program (CDBG) and 90-1-103, MCA, require the department to adopt rules to implement the program.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Jennifer Olson , Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2550; fax (406) 841-2773; TDD (406) 841-2702; or e-mail jeolson@mt.gov, and must be received no later than 5:00 p.m., May 9, 2013.

5. Jennifer Olson, 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 person in section 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Kelly A. Lynch
KELLY A. LYNCH
Rule Reviewer

/s/ Meg O'Leary
MEG O'LEARY
Director
Department of Commerce

Certified to the Secretary of State April 1, 2013.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.50.301 pertaining to state solid waste)
management and resource recovery)
plan)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(SOLID WASTE)

TO: All Concerned Persons

1. On May 3, 2013, at 9:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., April 22, 2013, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.50.301 STATE SOLID WASTE MANAGEMENT AND RESOURCE RECOVERY PLAN (1) The ~~board~~ department adopts and incorporates by reference the Integrated Waste Management Plan (IWMP), ~~2006~~ 2013 edition, as the state solid waste management and resource recovery plan. Copies of the plan may be obtained by contacting the Energy and Pollution Prevention Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; by phone at (406) 841-5200; or at <http://www.deq.mt.gov/Recycle/intewastemanag.mcp>.

(2) "Department" means the Department of Environmental Quality provided for in 2-15-3501, MCA.

AUTH: ~~75-10-106~~ 75-10-104, 75-10-111, MCA

IMP: 75-10-111, 75-10-807, MCA

REASON: The Department of Environmental Quality (department) is required by 75-10-104, 75-10-111, and 75-10-807, MCA, to review and update, as necessary, the State's state solid waste management and resource recovery plan (Plan). The current Plan was adopted in 2006 and evaluated yearly and at the five year mark and significant changes were not deemed necessary. During the 2012 review, department staff determined that an update was necessary to make the plan reflect existing targets and conditions in the following respects:

1. Include statutory changes in 2005 to targets for waste reduction from recycling and composting that were addressed in the 2006 Plan;
2. Report current diversion rates and landfill capacities;
3. Describe changed market conditions such as the increase of both electronic waste and construction waste, and review actions needed to address them; and
4. Describe public interest in rural community recycling, and review approaches for increasing recycling there.

The department, therefore, drafted a proposed update to the Plan that addresses these matters.

More specific rationales for plan components are contained in the proposed Plan.

Upon adoption, the 2013 Plan will serve as a planning document for department activities as well as an educational document for state and local governments.

The Board of Environmental Review (board) adopted and incorporated the 2006 Integrated Waste Management Plan by reference in ARM 17.50.301. Section 75-10-111, MCA, was amended in 2007 to give the department, rather than the board, the authority and duty to adopt the Plan and to require the department to follow the rulemaking procedures of the Montana Administrative Procedure Act when adopting updates to the Plan. To adopt the proposed update, it is necessary for the department to amend ARM 17.50.301(1) by substituting the department for the board and amending the version of the Plan incorporated by reference from 2006 to 2013. In addition, the rule currently uses the word "department" but does not define it. The department proposes to correct this by adopting a new (2) that defines "department" to mean the department of environmental quality.

The department is proposing to adopt the update to the Plan by reference because it would be unduly cumbersome, expensive, or otherwise inexpedient to publish the entire Plan in the Montana Administrative Register (Register) and Administrative Rules of Montana. It is reasonable to adopt it by reference. See 2-4-307, MCA. The Plan consists of 32 pages, and it would cost the department \$50/page to publish the entire proposed plan in the Register, for a total additional cost of \$ 1,600.00, plus an additional cost at \$50/page to publish any changes in the final plan. Furthermore, each time the Plan is updated, each page where a change is proposed would have to be published, at \$50/page. To save money and avoid making the Register too cumbersome, the department is proposing to adopt the Plan by reference. The entire updated Plan will be made available to the public in electronic form on the department's web site, and in print on request. Therefore, publication of the entire Plan would be cumbersome and expensive, and it is reasonable to adopt it by reference.

4. The department is proposing to adopt the Integrated Waste Management Plan (IWMP), 2013 edition, as the state solid waste management and resource recovery plan. Copies of the plan may be obtained during the comment period by contacting the Energy and Pollution Prevention Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; by phone

at (406) 841-5200; or at <http://deq.mt.gov/Recycle/intewastemanag.mcp>.

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 Elois Johnson, 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 ejohnson@mt.gov, no later than 5:00 p.m., May 9, 2013. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: /s/ Tracy Stone-Manning
TRACY STONE-MANNING, Director

Certified to the Secretary of State, April 1, 2013.

BEFORE THE LICENSED ADDICTION COUNSELORS PROGRAM
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.154.301 definitions,	)	PROPOSED AMENDMENT,
24.154.401 fee schedule, 24.154.405	)	AMENDMENT AND TRANSFER,
education requirement, 24.154.407	)	ADOPTION, AND REPEAL
application procedures, 24.154.409)	
supervised work experience,)	
24.154.420 nonresident counselor)	
services, 24.154.2101 renewals,)	
24.154.2105, 24.154.2106, and)	
24.154.2107 continuing education,)	
24.154.2301 unprofessional conduct,)	
24.154.2401 complaint procedure,)	
the amendment and transfer of ARM)	
24.154.421 (24.154.408) licensure by)	
endorsement, the adoption of NEW)	
RULE I inactive status and)	
conversion, and the repeal of ARM)	
24.154.410 and 24.154.411)	
supervision, 24.154.415 certification,)	
24.154.416 and 24.154.417)	
examinations)	

TO: All Concerned Persons

1. On May 7, 2013 at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, amendment and transfer, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Licensed Addiction Counselors Program (program) no later than 5:00 p.m., on May 1, 2013, to advise us of the nature of the accommodation that you need. Please contact Cyndi Breen, Licensed Addiction Counselors Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdcdc@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of a thorough periodic review, the department is proposing revisions throughout the licensed addiction counselor program's administrative rules. Some of the proposed amendments are technical in nature, such as renumbering or amending punctuation within certain rules following amendment and to comply with ARM formatting

requirements. Other changes replace out-of-date terminology and align language with current national trends, curricula, industry usage, and standards, delete unnecessary, outdated, or redundant sections, substitute gender neutral terms for gender specific language, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use. The department is replacing the term "certification" with "licensure" to clarify that a certification is a license pursuant to 37-1-130(8), MCA. Authority and implementation cites are being amended throughout to accurately reflect all statutes implemented through the rule, provide the complete sources of the department's rulemaking authority, and delete references to repealed statutes.

Accordingly, the department has determined that it is reasonably necessary to generally amend the program rules at this time. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

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

24.154.301 DEFINITIONS ~~For purposes of this chapter, the following definitions apply:~~

(1) "Client" means a recipient of licensed addiction counseling services, ~~provided by an eligible or certified counselor, and includes the primary client, family or household members and other significant relationships of the client.~~

(2) ~~"Eligible counselor" means an individual who has completed the academic requirements and the application process for certification.~~ "Contact hour" means academic coursework, approved workshop training, or an approved home study course that is completed hour-for-hour.

(3) "Co-occurring disorder" means the existence of any addiction and any other physical and or mental health disorder.

(4) "Direct supervision" means the supervisor is within audible and visible reach of the person being supervised.

(5) "Dual relationship" means a relationship where a licensed addiction counselor is concurrently or sequentially participating in two or more role categories with a client. These types of relationships may include, but are not limited to, social, professional, familial, financial, business, treatment-professional, communal, institutional, forensic, educational, supervisory, sexual, digital, online, or internet.

(6) "Evidence-based" means the licensed addiction counselor systematically finds, appraises, and uses the most current and valid research findings as the basis for clinical decisions.

(7) "Exploit" means to manipulate or use, or attempt to manipulate or use a professional relationship with a client, former client, supervisee, or student for the licensee's emotional, financial, romantic, sexual, or personal advantage, or for the advancement of the licensee's personal, religious, political, or business interests.

(8) "Onsite clinical supervision" means the supervisor must be in the facility and immediately available to the person being supervised.

(9) "Significant monetary value" means more than a de minimis value exceeding \$25.00.

AUTH: 37-35-103, MCA
IMP: 37-35-102, MCA

REASON: The department determined it is reasonably necessary to amend (1) and no longer list the specific people who are considered clients, since the current definition has caused confusion among licensees. The department is proposing deleting the definition of "eligible counselor" from (2) given the reference in statute is to temporary practice permit holder. The department is proposing the remainder of the new definitions to align with and clarify terms used in other rules proposed for amendment in this notice.

24.154.401 FEE SCHEDULE (1) The following is the fee schedule for licensed addiction counselors:

- (a) ~~Original Examination Application~~
for Licensed Addiction Counselor \$200 250
- (b) ~~Original Endorsement Application~~ 200
- (c) ~~Original License~~ 50
- (d) and (e) remain the same, but are renumbered (b) and (c).
- (2) and (3) remain the same.

AUTH: ~~37-1-131, 37-1-134,~~ 37-35-103, 37-35-202, MCA
IMP: ~~37-1-131, 37-1-134,~~ 37-1-141, 37-35-103, 37-35-202, MCA

REASON: The department is proposing to combine the separate application and license fees into one for either exam or endorsement. The total fees remain unchanged. The department proposes this to simplify the fee payment process at the time of application.

24.154.405 EDUCATION REQUIREMENT (1) The following education requirements apply only to students enrolled in an education program per 37-35-202, MCA, prior to [the effective date of the amendments to ARM 24.154.407].

- (1) remains the same but is renumbered (2).
- (a) through (c) remain the same.
- (2) remains the same but is renumbered (3).
- (a) through (g) remain the same.

AUTH: 37-35-103, MCA
IMP: 37-35-202, MCA

REASON: Following the amendment to the education requirements in ARM 24.154.407 within this notice, the department is amending this rule to clearly delineate that these existing education requirements will only apply to temporary practice permit applicants who were enrolled in an education program prior to [the effective date of the amendments to ARM 24.154.407.]

24.154.407 APPLICATION PROCEDURES (1) ~~Individuals applying for chemical dependency counselor certification in Montana must meet the education requirement before making application for certification or beginning the 1000 hours of supervised work experience. Individuals who have submitted an application that is accepted by the department are then determined to be "eligible" for certification. Applicants who meet the education requirement must submit~~ An individual seeking licensure in Montana as a licensed addiction counselor (LAC) will first be granted a temporary practice permit upon submission of the following:

(a) ~~a completed application for chemical dependency counselor certification three page form (Form A 1-3), available through the program office. Application must include original signature of applicant and will not be accepted without:~~

- ~~(i) required documentation of education (official transcripts or document verifying graduation from a certified training program) including required 270 contact hours of chemical dependency specific training; and~~
- ~~(ii) specific information regarding the chemical dependency treatment setting in which the supervised work experience will be completed. Applicants must provide the name of the certified counselor responsible for the work supervision.~~
- ~~(iii) individuals applying for certification who have completed the work experience in another state or in Montana prior to July 1, 1996, will need to submit information and documentation with the application for approval by the department; and~~

(b) ~~required fee payment.~~ official transcripts, certificates of completion, or other forms of documentation to verify graduation, sent directly from the accredited college or university as proof of successful completion of an education program per 37-35-202, MCA;

(i) Qualifying education in (b) must include at least 300 contact hours of specific courses, including minimum hours in each of the following areas:

(A) substance-related/use disorders assessment and patient placement, biopsychosocial testing, diagnosis, referrals, and the American Society of Addiction Medicine Patient Placement (ASAM) criteria or any nationally recognized equivalent 60 hours

(B) licensed addiction counseling 90 hours

(C) pharmacology (must include drug classification, effects, detoxification, and withdrawal) 30 hours

(D) ethics (ethics for licensed addiction counselors) 15 hours

(E) alcohol and drug studies 30 hours

(F) treatment planning and documentation 30 hours

(G) multicultural competency 15 hours

(H) co-occurring disorders 30 hours

(c) specific information regarding the licensed addiction counseling treatment setting where the supervised work experience will be completed, including:

(i) name of the LAC responsible for the supervised work experience;

(ii) verification that any and all licenses held by the LAC supervisor in other jurisdictions are unrestricted with no pending discipline; and

(iii) proof that the LAC supervisor has at least three years of licensed addiction counseling experience post licensure in an approved LAC treatment setting; and

(d) required application fee payment.

~~(2) Applicants will be notified within 30 days if the application has been accepted. Eligible applicants will receive information regarding the written examination and the applicants guide for the oral case presentation examination. Applicants will also receive an examination schedule.~~

~~(3) The application will be closed if certification is not completed within 18 months after completion of the required 1000 hours work experience. Individuals eliminated from the certification process will be required to reapply and submit a new application with the required fee payment. Applicants reapplying for certification must complete all examinations.~~

(2) The new education requirements in (1)(b)(i)(A) through (H) apply to first-time students newly enrolled in an education program after [the effective date of the amendments to this rule]. The former education requirements at ARM 24.154.405 apply only to students enrolled in an education program prior to [the effective date of the amendments to this rule].

(3) A person is eligible for only one temporary practice permit for each application and no extensions to permits are allowed.

(4) Pursuant to ARM 24.154.409, LAC temporary practice permit holders must submit proof of completed supervised work experience hours, signed by the permit holder's LAC supervisor, before becoming eligible to take the written examination. Supervised work experience forms are included in the LAC application.

(5) Individuals with a LAC temporary practice permit must provide proof of completed supervised work experience hours as detailed in (1)(c) before they are eligible to take the written examination.

(6) The written examination shall cover four content areas:

(a) pharmacology of psychoactive substances;

(b) counseling practice;

(c) theoretical based counseling; and

(d) professional issues.

(7) Applicants must receive a passing score on the Level 1 or Level 2 written examination prescribed by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NCC). Test results are sent to the applicants and the department. Applicants receive an "overall" score for the examination and separate scores for each of the four content areas.

AUTH: 37-35-103, MCA

IMP: 37-35-202, ~~37-35-203~~, MCA

REASON: The department determined it is reasonable and necessary to amend and organize this rule to combine all licensure requirements into a single location for simplicity and ease of reference. The department is further proposing an increase in the addiction-specific education hour requirements for the first time since 1997. The amplified education requirements are reasonably necessary to align with national industry advancements in assessing and treating addictive disorders and their complexities. The department is amending and clarifying the eligibility requirements

and procedures for obtaining temporary practice permits to accurately represent current licensure procedures and conform to the program's statutory authority.

24.154.409 REQUIRED SUPERVISED WORK EXPERIENCE (1) ~~Six months (1000 hours) of supervised chemical dependency counseling experience in an approved chemical dependency treatment setting is required for certification. The supervised experience may be gained through paid work experience, academic internship hours or unpaid volunteer work if the applicant is supervised by a Montana certified chemical dependency counselor in an approved treatment setting. The counseling experience must be completed in not more than two different treatment settings. (Internship hours earned through an academic chemical dependency field placement program are not included in the limit of two treatment settings.)~~

~~(2) Qualified chemical dependency treatment settings include those in which counselors may obtain clinical training and experience and are based on nationally recognized patient placement criteria. The criteria defining chemical dependency treatment settings include those which provide the basis for a continuum of care for patients with alcohol and/or drug addiction and include one or more of the following levels of care:~~

- ~~(a) outpatient treatment;~~
- ~~(b) intensive outpatient/day treatment;~~
- ~~(c) medically monitored inpatient treatment (residential); and~~
- ~~(d) medically managed inpatient treatment (hospital).~~

~~(3) Approved settings for chemical dependency counseling experience include:~~

- ~~(a) state approved chemical dependency treatment programs;~~
- ~~(b) Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or Commission on Accreditation of Rehabilitation Facilities (CARF) approved settings for addictions treatment;~~
- ~~(c) Indian Health Service approved settings for chemical dependency treatment;~~
- ~~(d) organized addictions treatment programs within branches of the armed forces of Veterans Administration hospitals;~~
- ~~(e) organized group practice settings (three or more certified counselors in a defined, conjoint practice) providing addiction treatment services. The work setting must have the capacity to provide multidisciplinary supervision.~~

~~(4) All approved outpatient treatment settings must have a direct referral affiliation for the provision of detoxification services, medical and laboratory services and psychiatric and psychological consultation.~~

~~(5) All approved treatment settings must demonstrate that the individualized treatment plans include problem formulations, goals, measurable treatment objectives and progress notes and that it conducts regular reviews of plans at specified times by a designated treatment team.~~

(1) Supervised work experience hours are determined according to the academic achievement of the applicant as follows:

- (a) 500 hours within six months of receipt of the temporary practice permit for masters or higher degree applicants;

(b) 1000 hours within 12 months of receipt of the temporary practice permit for baccalaureate degree applicants; or

(c) 2000 hours within 24 months of receipt of the temporary practice permit for associate degree applicants.

(2) Applicants for LAC temporary practice permits must maintain weekly timesheets.

(a) The weekly timesheets must document the following 11 skill areas:

(i) screening;

(ii) assessment/patient placement;

(iii) treatment planning;

(iv) referrals;

(v) case management;

(vi) individual counseling;

(vii) group counseling;

(viii) client education;

(ix) documentation;

(x) professional and ethical responsibilities; and

(xi) multicultural competency.

(b) The weekly timesheets must be signed by the supervisor and submitted to the department at the completion of the required minimum hours.

(c) The supervisor must observe the work of applicants for LAC temporary practice permits in each of the 11 skill areas.

(d) A summary sheet for each supervisor named must also be attached to the weekly timesheets to verify the applicants meet the required minimum hours in the 11 skill areas. This summary sheet shall summarize the weekly timesheets maintained by the applicants.

(e) Applicants must complete the required minimum hours in the 11 skill areas according to their academic achievement as follows:

Skill Areas	Masters or Higher Degree (hours)	Baccalaureate Degree (hours)	Associate Degree (hours)
screening	15	30	60
assessment/patient placement	50	100	200
treatment planning	25	50	100
referrals	10	20	40
case management	20	50	100
individual counseling	30	60	120
group counseling	50	100	200
client education	20	40	80
documentation	20	40	80
professional and ethical responsibilities	5	15	20
multicultural	5	15	20

competency			
TOTAL	250	520	1020

(i) For masters or higher degree applicants, 25 hours of the 250-hour minimum must be under direct supervision. The remaining hours must be under onsite clinical supervision in each of the 11 skill areas.

(ii) For baccalaureate degree applicants, 52 hours of the 520-hour minimum must be under direct supervision. The remaining hours must be under onsite clinical supervision in each of the 11 skill areas.

(iii) For associate degree applicants, 102 hours of the 1020-hour minimum must be under direct supervision. The remaining hours must be under onsite clinical supervision in each of the 11 skill areas.

(3) Temporary practice permit holders may select any of the 11 skill areas in order to accumulate the remaining supervised work experience hours. Temporary practice permits holders may select any of the 11 skill areas in order to accumulate the remaining supervised work experience hours.

(4) Temporary practice permit holders are not eligible to take the examination if the supervised work experience hours are not accumulated by the end of the timeframes delineated in (1). If holders do not accumulate their supervised work experience hours within those timeframes, their applications will be closed and applicants must reapply, pay the application fee, and begin accumulating the required hours again.

(5) Supervised work experience hours may be gained through paid work experience, academic internship hours, or unpaid volunteer work if the temporary practice permit holder is supervised by a Montana LAC in a qualified treatment setting.

(6) Supervised work experience must be completed in not more than two different treatment settings. Internship hours earned through an academic program are not included in the limit of two treatment settings.

(7) Qualified treatment settings include those where temporary practice permit holders may obtain supervised work experience based on nationally recognized patient placement criteria. Criteria for these treatment settings may include settings that provide the basis for a continuum of care for patients with addictions and settings that may include any level of care as defined by American Society of Addiction Medicine (ASAM).

(a) Qualified treatment settings for supervised work experience may include, but are not limited to the following:

(i) settings with a primary focus in licensed addiction counseling;

(ii) Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or Commission on Accreditation of Rehabilitation Facilities (CARF)-approved settings;

(iii) Indian Health Service (IHS)-approved settings;

(iv) organized licensed addiction counseling settings within branches of the armed forces of veterans' administration hospitals; and

(v) organized group practice setting (two or more licensed addiction counselors in a defined, conjoint practice). The work setting must have the capacity to provide multidisciplinary supervision.

(b) Qualified treatment settings must have a direct referral relationship for the provision of:

- (i) detoxification services;
- (ii) medical services;
- (iii) laboratory services;
- (iv) psychiatric consultations; and
- (v) psychological consultations.

(c) Qualified treatment settings must demonstrate the individualized treatment plans including:

- (i) problem formulations;
- (ii) goals;
- (iii) measurable treatment objectives;
- (iv) progress notes; and
- (v) regular reviews of plans at specified times by a designated treatment

team.

AUTH: 37-35-103, MCA

IMP: 37-35-202, MCA

REASON: The department determined it is reasonably necessary to amend this rule to incorporate and reorganize all the requirements regarding supervision that were previously set forth in ARM 24.154.409 through 24.154.411. Following amendment, the supervision requirements will be based on the applicant's educational level to reflect the department's decision that applicants with higher levels of education do not require as many hours as those with lower levels of education. The department is amending the acceptable treatment settings to remove the requirements for specific levels of care after concluding that it is sufficient to accept any level of care as defined by the American Society of Addiction Medicine (ASAM).

24.154.420 NONRESIDENT CHEMICAL DEPENDENCY LICENSED ADDICTION COUNSELOR SERVICES

~~(1) Nonresident consulting chemical dependency counselor Licensed addiction counselors (LACs) may render activities or services defined in 37-35-201, MCA, may be rendered to individuals, groups, corporations, or the public for compensation or fee on a limited basis as provided in 37-35-201, MCA.~~

~~(2) To provide If the provision of such services allowable by 37-35-201, MCA, and engage in such activities in the state of Montana, a chemical dependency counselor duly licensed in the state of the counselor's residence shall file with the program a completed and notarized form provided by the program, stating the nature, location and duration of such services that exceed exceeds ten days within any calendar year, the nonresident LAC shall report the nature and extent of the activity or service to the department on a department-provided form.~~

~~(3) A letter verifying termination of said services shall be filed with the program at the time of termination.~~

AUTH: 37-35-103, MCA

IMP: 37-35-201, MCA

REASON: The department determined it is reasonably necessary to amend this rule to conform processes to the statutory provisions of 37-35-201, MCA, as it is implemented through this rule. The rule is further amended to update to current industry terminology and eliminate notarized forms to encourage and facilitate electronic applications. The department concluded that an affirmation as to the truth of the form's contents is sufficient. The department is striking (3) entirely, as requiring nonresident LACs to notify the department when they cease providing services in Montana exceeds the scope of the statute being implemented.

24.154.2101 RENEWALS (1) remains the same.

~~(2) A renewed certificate Licenses are shall be valid for the time period length of time listed under the renewal frequency in ARM 24.101.413 following the renewal date.~~

~~(3) A default in the payment of a renewal fee after the date it is due increases the renewal fee as prescribed by the The department shall assess late penalty fees in accordance with ARM 24.101.403 for the reactivation of lapsed or expired licenses. A certificate holder, that has not received the certificate from the department due to failure of the certificate holder to meet continuing education requirements or to pay the renewal fee, will be notified in writing by the department. The certificate holder shall have 12 months from the renewal date to obtain continuing education acceptable to the department.~~

(4) remains the same.

AUTH: 37-1-141, 37-35-103, MCA

IMP: 37-1-141, MCA

REASON: The department is amending this rule to accurately reflect current department business processes and align with provisions on licensure renewal in statute and rule.

24.154.2105 CONTINUING EDUCATION REQUIREMENTS (1) ~~All certified counselors are required to earn~~ Licensed addiction counselors (LACs) must obtain 40 20 hours of approved continuing education per two-year renewal cycle to renew their certificate licenses. Continuing education received prior to the date of certification licensure is not counted for towards renewal.

~~(2) Counselors earning more than 40 hours over the two-year renewal period will be permitted to carry forward up to 20 hours to the next renewal cycle. New licensees applying for their first license renewal are not required to report continuing education.~~

~~(3) The purpose of continuing education is the ongoing professional development of chemical dependency professionals LACs after full certification licensure is awarded. It is the responsibility of the individual chemical dependency counselor each licensee to plan, pursue obtain, and document the counselor's continuing education.~~

~~(4) If a certificate licensees holder is are unable to acquire sufficient continuing education credits to meet the requirements due to medical hardship, the~~

~~certificate holder licensees~~ may request an ~~exemption~~ exception from the department. All requests for ~~exemptions~~ exceptions will be ~~considered and~~ evaluated on a case-by-case basis by the department.

AUTH: 37-35-103, MCA

IMP: 37-1-131, 37-1-306, 37-35-103, ~~37-35-203,~~ MCA

REASON: The department is amending (1) to shift from a 2-year to an annual CE reporting cycle. This change will simplify and standardize processes by aligning the reporting cycle with the annual renewal period, and reduce staff time and costs.

The department is amending (2) to eliminate the ability of licensees to carry over continuing education (CE) credits from one renewal period to the next to ensure that licensees maintain a level of knowledge that is current with treatment practices. The department is clarifying the CE requirements for new licensees in (2) to address confusion among applicants and licensees.

24.154.2106 COURSE CRITERIA (1) ~~Content of all~~ All continuing education courses must be:

~~(a) relevant to chemical dependency licensed addiction counseling;~~

~~(b) Training must be~~ related to the scientific knowledge or technical skills required for ~~chemical dependency licensed addiction counseling;~~

~~(c) Training must be~~ related to direct ~~and/or~~ or indirect client care of ~~chemically dependent individuals with addictions.~~

~~(2) Approved courses~~ Courses are not limited to ~~specific alcohol/drug those involving alcohol or drug~~ topics, but may include training in other counseling areas, such as child abuse, compulsive gambling, grief, dually diagnosed clients, stress management, ~~or~~ and sexuality.

~~(2) (3) Courses in chemical dependency licensed addiction counseling program administration or management, research, or other functional areas of chemical dependency treatment programs related to client care will be accepted~~ are acceptable.

~~(3) (4) Courses leading to basic counselor training are not acceptable for continuing education for certified chemical dependency counselors.~~

~~(4) Courses which~~ and courses that deal with the participants' self-improvement, personal growth, changes in attitude, self-therapy, ~~or~~ and self-awareness are not ~~approved~~ acceptable for continuing education credit. Examples of courses that are not ~~approved~~ acceptable for continuing education credit include:

(a) remains the same.

~~(b) chemical dependency licensed addiction counseling education course~~ courses designed for lay people (public education);

(c) remains the same.

(d) liberal arts courses in music, education, art, and other courses unrelated to ~~chemical dependency licensed addiction counseling;~~ and

(e) remains the same.

~~(5) Courses or workshops containing a minimum of six hours training are "structured" workshop training.~~

(6) remains the same, but is renumbered (5).

AUTH: 37-35-103, MCA

IMP: 37-1-131, 37-1-306, 37-35-103, 37-35-203, MCA

REASON: The department determined it is reasonably necessary to amend this rule throughout to more clearly delineate the requirements for acceptable CE courses. The department is deleting (5) because it was created when CE opportunities were difficult to find.

24.154.2107 CONTINUING EDUCATION PROCEDURES AND DOCUMENTATION (1) ~~Certificate holders shall affirm their understanding of and compliance with the continuing education requirements with the signing of the renewal form~~ Renewing licensees shall submit a completed renewal form to the department either electronically or by mail and pay the applicable renewal fee.

(a) At renewal, licensees must affirm they have complied with all continuing education (CE) requirements.

(b) New licensees renewing for the first time are exempt from CE reporting, but shall affirm compliance with all CE requirements beginning with their second renewal.

~~(2) The renewal application form must be completed and submitted, together with the renewal fee, as verification of continuing education hours earned during the renewal period.~~

~~(3) (2) Certificate holders are required to keep a record of continuing education they have completed~~ Licensees must maintain documentation of completed CE for two years. These records shall be made and make the records available to the department if the certificate holder is licensees are selected for a chosen as a part of the random audit review. The department will annually conduct a random audit of 15 percent of renewed licensees to verify compliance with CE requirements.

~~(4) (3) Documentation verifying attendance must be attached for all workshops CE listed on the continuing education submission form. Certificate of attendance must be signed by the sponsoring agency or workshop presenter, and must include the name of the workshop, name of counselor and the date and number of hours attended.~~

~~(5) (4) Certificates of completion for training will not be returned and must include the course name, number of hours earned, date of completion, and signature of the provider. Copies of certificates of attendance are accepted for verification. Documentation will be recorded in counselors computer file and the copy of certificate discarded.~~

~~(6) Documentation as required below shall be accepted for each of the following continuing education formats:~~

~~(a) (5) Counselors attending workshops that have been preapproved by the department will submit a copy of the certificate of completion. Counselors who attend training that has not been preapproved must submit, in~~ For each training attended, and in addition to the certificate of completion, LACs must submit an agenda with the specific breakdown to of training hours (specific time of registration,

breaks, lunch, etc.), a description of the training, and names of the trainers presenters.

~~(b) (6)~~ A maximum of 20 ten contact hours may be earned over the ~~two-year certification one-year renewal~~ period by ~~workshop presenters and/or preparation by the author or authors of a recognized professional publication~~ licensees presenting workshops. Presenting licensees may earn up to one-half of the actual contact hours presented for preparation time. Credit for preparing presentations will be granted only one time per workshop.

~~(7)~~ Licensees may earn up to five hours for each professional article or book authored by licensees. Licensees may earn up to a maximum of ten hours per renewal cycle in this manner.

~~(i)~~ workshop presenters may earn up to one-half of the actual contact hours presented for preparation time;

~~(ii)~~ credit for preparing presentations may be earned only one time for a training event;

~~(iii)~~ ten hours may be earned by the author for publication of each professional article or book, up to the maximum of 20 hours per renewal cycle.

~~(c)~~ Training that is less than six continuous hours is considered in-service training. In-service hours do not require prior approval but individual in-service records must be maintained by the counselors. Each in-service training record must include the date of the in-service, the subject or title, the name of the trainer, the length of the in-service (i.e., 1 hour, 1.5 hours) and must be signed by the trainer or the counselor's supervisor.

~~(d)~~ (8) Training films may be used for ~~in-service training~~ continuing education, provided the films are observed as part of a ~~structured workshop or in-service training~~ continuing education that ~~include~~ includes a discussion period. Films observed outside a work setting ~~in-service~~ may be counted if the film includes a test instrument to verify training.

~~(e)~~ (9) Counselors may earn all or part of the required continuing education from advanced academic courses. Course work must be completed after the date of certification licensure or certificate license renewal. Courses must be taken for credit. Audited courses will not receive continuing education credit. Ten hours will be ~~given~~ granted for each academic quarter hour, ~~or~~ and 15 hours for each semester credit hour, in the fields of ~~chemical dependency~~ addiction counseling, psychology, social work, and professional counseling, ~~and sociology~~.

~~(f)~~ (10) Home study courses ~~that have been approved by the department will~~ require a certificate of completion that includes the course name, number of hours earned, date of completion, and signature of the provider.

AUTH: ~~37-1-319, 37-35-103, MCA~~

IMP: 37-1-104, 37-1-131, 37-1-306, 37-35-103, MCA

REASON: The department is amending this rule to streamline and clarify the continuing education (CE) requirements for licensees and clearly set forth the department's random audit process. These amendments are reasonably necessary to standardize the renewal and audit processes with the rest of the boards and programs attached to the department. Requiring proof of CE through a random

audit of 15 percent of renewed licensees will help ensure an adequate audit sample to demonstrate that licensees are current with treatment practices. The department further concluded that requiring a time limit for affirming completion of CE and for retaining CE records aligns with standard department processes. The department is amending new (9) to delete sociology as an available CE course to acknowledge that due to the evolution of the sociology profession, the field is no longer as closely related to the LAC profession.

24.154.2301 UNPROFESSIONAL CONDUCT ~~The licensed addiction counselors program defines unprofessional conduct as follows~~ (1) In addition to unprofessional conduct as identified in 37-1-410, MCA, a violation of one or more of the following constitutes unprofessional conduct:

~~(1)~~ (a) having sexual relations soliciting or engaging in a sexual or intimate relationship with a client, a supervisee, client's family member, a client's household member, or other persons with whom a client has had a significant relationship within two years after termination of services to that client;

(b) soliciting or engaging in a sexual or intimate relationship with a former client within two years after the termination of professional services;

~~(2)~~ (c) soliciting sexual relations, committing an act of sexual misconduct or committing a sexual offense, as defined in 46-23-502(9), MCA with a client or former client;

~~(3)~~ (d) soliciting or undertaking engaging in sexual relations with the client of another counselor employed in the same program providing services;

~~(4)~~ (e) recklessly or carelessly causing physical, mental, or emotional harm to a client;

(5) remains the same, but is renumbered (f).

~~(6)~~ providing professional counseling services to members of the counselor's own family, household members, friends or close associates or any person with whom the counselor has had a previous sexual relationship;

(g) engaging in sexual or other harassment of a client, former client, or supervisee;

(7) and (8) remain the same, but are renumbered (h) and (i).

~~(9)~~ (j) failing to make an appropriate referral of a client to another professional when requested to do so by the client, or when the problem of the client scope of services is beyond the training, experience, or competence of the counselor;

(10) remains the same, but is renumbered (k).

~~(11)~~ (l) failing to keep the client informed as to the purpose and nature of any evaluation, treatment, or other procedures, and of the client's right to freedom of choice regarding services provided;

~~(12)~~ (m) accepting gifts or gratuities of significant monetary value or borrowing money from a client or former client within two years after termination of services, except when this is a culturally accepted practice;

~~(13)~~ (n) misrepresenting the types or status of certification licensure by performing or holding oneself out as able to perform professional services beyond the counselor's field of competence, or outside the scope of the certificate license, or

delegating professional responsibilities to a person not appropriately qualified to provide such services;

~~(14)~~ (o) committing any dishonest, corrupt, or fraudulent act which is substantially related to the qualifications, functions, or duties of the ~~certificate or any act that exploits a client~~ licensee;

~~(15)~~ (p) discriminating against or refusing professional services to anyone on the basis of race, color, gender, religion, national origin, disability, sexual orientation, or any basis prohibited by law;

(16) remains the same, but is renumbered (q);

~~(17)~~ (r) conviction of driving while under the influence of alcohol or drugs (DUI), or criminal possession of dangerous drugs at any time after issuance of a ~~certificate~~ license, and within the two years preceding an application for ~~certificate~~ licensure;

(18) remains the same, but is renumbered (s).

~~(19)~~ (t) using mood altering chemicals in a manner adversely affecting work performance, effectiveness, credibility, or professional integrity;

(20) remains the same, but is renumbered (u).

~~(21)~~ (v) providing false or misleading information or documentation in the ~~certification~~ application, or renewal process, or in submission of continuing education information;

(w) failing to use current evidence-based contextually valid assessment instruments;

(x) failing to provide clients with complete explanation of the purpose of an assessment and limitations regarding content, validity, reliability, and norms for the persons served;

(y) using techniques including automated interpretation services or administering, scoring, or interpreting results of an assessment, without being able to produce appropriate evidence for the content validity of the procedures used in arriving at interpretations;

(z) failing to utilize evidence-based procedures and practices and observe relevant professional standards in developing assessment techniques;

(aa) failing to ensure that assessment results are accurate, detailed, and valid in a way that will be properly interpreted by the recipients;

(ab) encouraging and/or promoting the use of assessment techniques by inappropriately trained or otherwise unqualified individuals through teaching, sponsoring, or supervision;

(ac) exploiting in any manner the professional relationships with clients, former clients, supervisees, or students;

(ad) failing to exercise appropriate supervision over persons who are practicing under the supervision of the licensee;

(ae) entering into a treatment relationship that the licensed addiction counselor knows or reasonably ought to know has the potential to be exploitative in nature, compromises the licensed addiction counselor's objectivity or professional judgment, or creates or increases the risk of harm to the client due to:

(i) a prior association with the client or someone the client knows; or

(ii) knowledge about a client or someone the client knows without disclosing such potential for conflict to a client or potential client, and obtaining the client's consent for treatment despite the existing or potential conflict;

(af) causing a dual relationship with a client without first ensuring that the client's well-being is not compromised and that no harm occurs, such as the following:

(i) seeking consultation from supervisors or peers;

(ii) adhering to a credible decision-making process prior to entering the relationship;

(iii) supervision;

(iv) documentation; and

(v) disclosure and written informed consent from the client;

(ag) failing to resolve a treatment relationship that the licensed addiction counselor knows or reasonably ought to know has the potential to be exploitative in nature, compromises the licensed addition counselor's objectivity or professional judgment, or creates or increases the risk of harm to the client;

(ah) participating in bartering, unless bartering is considered to be essential for the provision of services negotiated without coercion, and entered into at the client's initiative and with the client's informed consent. Licensees who accept goods or services from clients as payment for professional services assume the full burden of demonstrating that this arrangement will not be detrimental to the client or the professional relationship;

(ai) falsifying or misrepresenting a record of supervision submitted in connection with an application for licensure;

(aj) engaging in the practice of licensed addiction counseling when the licensee's license is inactive, has expired, is terminated, or has been suspended or revoked;

(ak) failing to take reasonable steps to avoid abandoning clients;

(al) failing to make arrangements for consultation, co-therapy, or referrals in situations where the licensed addiction counselor cannot work effectively with the clients;

(am) failing to refer clients whose impairment statuses are beyond the scope of the licensed addiction counselor's expertise;

(an) failing to obtain informed consent from the clients regarding their treatment;

(ao) failing to create, maintain, disseminate, store, retain, and dispose of client records in an ethical manner that is in accordance with the law;

(ap) habitual intemperance or excessive use of an addictive drug, alcohol, or any other substance to the extent the use impairs the user physically or mentally; or

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

AUTH: ~~37-1-319~~, 37-35-103, 37-35-301, MCA

IMP: 37-1-316, ~~37-1-319~~, 37-1-410, 37-35-103, 37-35-301, MCA

REASON: The department is amending this rule to update and streamline the text and language and include additional instances of behavior that will qualify as unprofessional conduct for LACs. These additions are reasonably necessary to adequately address the number and types of complaints that have been and are being filed with the department regarding LAC licensees. Additionally, the amendments will better align this rule with national LAC standards and codes and enable the department to better protect public safety and health. The department is amending (1)(m) to reflect the seven different tribes recognized in Montana and enable the provision of licensed addiction counseling services on the reservations within acceptable cultural practices.

24.154.2401 COMPLAINT PROCEDURE (1) A person, government, or private entity may submit a written complaint to the department charging an applicant or ~~certificate holder~~ licensee with a violation of department and program statutes or rules, and specifying the grounds for the complaint.

(2) remains the same.

(3) Upon receipt of the written complaint form, the ~~program office~~ department shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the applicant or ~~certificate holder~~ licensee ~~complained about~~ referred to in the complaint for a written response. Upon receipt of the written response, both the complaint and response shall be considered by the review panel for appropriate action including dismissal, investigation, or a finding of reasonable cause of violation of a statute or rule. The ~~program office~~ department shall notify ~~both~~ the complainant and ~~certificate holder~~ either the licensee or applicant of the determination made by the review panel.

(4) If the ~~a reasonable cause violation determination is made by the review panel~~ finds reasonable cause of a violation, ~~the recommendation to the department shall be to undertake disciplinary proceedings under the Montana Administrative Procedure Act~~ applies.

AUTH: ~~37-1-402~~, 37-35-103, MCA

IMP: 37-1-402, 37-1-403, 37-1-404, 37-35-301, MCA

REASON: The department is amending this rule to update for current practices and terminology, and ease of use for the reader.

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

24.154.421 (24.154.408) COUNSELORS CERTIFIED IN OTHER STATES LICENSURE BY ENDORSEMENT

(1) ~~Counselors certified~~ Licensed addiction counselors (LAC) licensed in other states or through the military may apply for a Montana ~~endorsement certification~~ license. ~~Certificates issued will specify "endorsement certificate" and indicate the state issuing the original certificate. The examinations may be waived if the applicant~~ To apply, applicants must:

(a) ~~meets the current Montana education requirements;~~

~~(b) documents 2000 hours (one year) supervised chemical dependency counseling experience in a chemical dependency treatment setting in another state;~~
~~(c) holds a current state certificate, in good standing, from another state; and~~
~~(d) shows successful completion of an examination process comparable to the Montana examinations (must have successfully completed a written examination and an oral examination).~~

(a) complete the licensure application;

(b) submit documentation of education and required hours of supervised work experience pursuant to ARM 24.154.409;

(i) In the absence of access to a supervisor, applicants may verify the supervised work experience hours by affidavit, and need not supply a supervisor's signature upon reasonable explanation of why the supervisor's signature is unavailable.

(c) submit verification directly from all states where the applicant holds or has held a license that such license(s) are unrestricted with no pending discipline;

(d) submit proof of successful passage of the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NACC) Level 1 or Level 2 examination or equivalent;

(e) shall submit proof the applicant has been in continuous practice as a LAC in another jurisdiction for the two years immediately preceding the date of application in Montana; and

(f) pay the application fee.

~~(2) Individuals certified by branches of the military government may submit an application for Montana endorsement by providing documentation specified above and the current military certification. Applicants must also furnish the certification and examination requirements for the specific branch of the military.~~

~~(3) To apply for endorsement in Montana, the applicant must:~~

~~(a) complete the three page application for certification;~~

~~(b) attach documentation of education and required 2000 hours experience in a chemical dependency treatment setting in another state;~~

~~(c) provide a copy of the current certificate and standards required for certification by the certifying state, including a description of the examinations completed; and~~

~~(d) submit a completed registration form and pay the Montana registration fee.~~

~~(4) Individuals certified by a nationally recognized addiction organization prior to February 1, 1997 may submit an application for certification by exam. The educational requirement may be waived and the applicant may participate in the oral and written examination if the applicant:~~

~~(a) holds a current certificate, in good standing, from a nationally recognized addiction organization;~~

~~(b) has completed 270 contact hours of specific chemical dependency and counseling courses. These are contact hours that may be obtained through academic course work, approved workshop training or approved home study courses. The 270 hours must include minimum hours in each of the following areas:~~

~~(i) chemical dependency assessment and patient placement (must include chemical~~

- dependency assessment, biopsychosocial testing, diagnosis, referrals and patient placement) 30 hours
- (ii) counseling 45 hours
- (iii) pharmacology (must include drug classification, effects, detoxification and withdrawal) 12 hours
- (iv) ethics (ethics for addiction counselors) 6 hours
- (v) alcohol and drug studies 30 hours
- (vi) treatment planning and documentation 15 hours
- and
- (vii) multicultural competency—knowledgeable of and sensitive to the cultural factors and needs of diverse populations and demonstrate competency in applying culturally relevant skills 12 hours
- and
- (c) has completed 1000 hours (six months) supervised chemical dependency counseling experience in a chemical dependency treatment setting.
- (5) To apply for this certificate by examination in Montana, the applicant must:
 - (a) complete the three page application for certification and pay the Montana application fee;
 - (b) attach documentation of 270 education hours and the required 1000 hours supervised work experience in a chemical dependency treatment setting; and
 - (c) provide a copy of the applicant's current national certificate.
- (6) This certification by exam shall be available to applicants for a period of two years from October 27, 2000. All applicants after that date must apply for certification according to the requirements of the current statutes and rules.

AUTH: 37-35-103, MCA

IMP: ~~37-1-131~~, 37-35-103, MCA

REASON: The department determined it is reasonably necessary to relocate and renumber this rule so it directly follows the application procedure rule for better organization and ease of use. The department is further amending this rule to simplify and clearly delineate current licensure processes and reflect the proposed changes to the supervised work experience hours elsewhere in this notice. The department is amending (1)(b) to accommodate licensure for applicants who are unable to obtain the supervisor signatures for supervised work experience hours. The department is eliminating the use of "endorsement" to reduce confusion for licensees who might qualify for specific endorsements of their original license.

6. The proposed new rule provides as follows:

NEW RULE I INACTIVE STATUS AND CONVERSION FROM INACTIVE TO ACTIVE STATUS (1) A licensee may place a license on inactive status by either indicating on the renewal form that inactive status is desired or by informing the department in writing that an inactive status is desired. The license must have been active and in good standing prior to the first time it is placed on inactive status. It is

the sole responsibility of the inactive licensee to keep the department informed as to any changes of address during the period of time the license remains on inactive status. Inactive licensees must pay the inactive license fee annually to maintain license status.

(2) A license shall not be on inactive status for more than five consecutive years. At the end of the fifth year that a license has been on inactive status, the license must be converted to active status. If the license is not converted to active status, the provisions of 37-1-141, MCA, apply to the renewal, lapse, expiration, or termination of the license.

(3) An inactive status license does not entitle the licensee to practice as a licensed addiction counselor in Montana.

(4) Upon payment of the required fee in ARM 24.154.401, the licensee may convert an inactive license to an active license by:

(a) submitting satisfactory evidence that the licensee has not been out of active practice for more than five years; and

(b) submitting satisfactory evidence that the licensee has attended ten hours of continuing education per year while on inactive status, which comply with the continuing education rules of the department. The continuing education hours must have been acquired within the 24 months immediately preceding application to convert to active status.

AUTH: 37-35-103, MCA

IMP: 37-35-103, MCA

REASON: It is reasonably necessary to adopt this new rule to clearly set forth the process for LAC licensees to obtain, maintain, and convert licenses from inactive to active status. The processes align with those used by other department licensure boards and programs.

7. The rules proposed to be repealed are as follows:

24.154.410 DOCUMENTATION REQUIRED FOR VERIFICATION OF 1000 HOURS SUPERVISED COUNSELING EXPERIENCE found at ARM page 24-14627.

AUTH: 37-35-103, MCA

IMP: 37-35-202, MCA

REASON: The department is repealing this rule and combining all the supervised work experience requirements through amendments to ARM 24.154.409 in this notice.

24.154.411 DIRECT SUPERVISION - MINIMUM HOURS REQUIRED found at ARM page 24-14628.

AUTH: 37-35-103, MCA

IMP: 37-35-202, MCA

REASON: The department is repealing this rule and combining all the supervised work experience requirements through amendments to ARM 24.154.409 in this notice.

24.154.415 CERTIFICATION PROCESS found at ARM page 24-14635.

AUTH: 37-35-103, MCA
IMP: 37-35-202, MCA

REASON: The department is repealing this rule as all examination and supervision requirements are being relocated to ARM 24.154.407 and ARM 24.154.409 in this notice.

24.154.416 WRITTEN EXAMINATION found at ARM page 24-14636.

AUTH: 37-35-103, MCA
IMP: 37-35-202, MCA

REASON: The department proposes to repeal this rule since all education requirements are being relocated to ARM 24.154.407 in this notice.

24.154.417 ORAL EXAMINATIONS found at ARM page 24-14637.

AUTH: 37-35-103, MCA
IMP: 37-35-202, MCA

REASON: The department is repealing this rule as obsolete. In 2005, 37-35-202, MCA, was amended to eliminate the requirement for an oral examination.

8. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Licensed Addiction Counselors Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdcdc@mt.gov, and must be received no later than 5:00 p.m., May 15, 2013.

9. An electronic copy of this Notice of Public Hearing is available through the department and program's site on the World Wide Web at www.lac.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical

problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on August 7, 2009, by electronic mail.

12. Joslyn Hunt, attorney, has been designated to preside over and conduct this hearing.

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 1, 2013

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.159.301 definitions,) PROPOSED AMENDMENT,
24.159.1405, 24.159.1412 through) ADOPTION, AND REPEAL
24.159.1414, 24.159.1418,)
24.159.1427, 24.159.1428,)
24.159.1461, 24.159.1463,)
24.159.1464, 24.159.1467,)
24.159.1468, 24.159.1470,)
24.159.1475, 24.159.1480, and)
24.159.1485 advanced practice)
registered nurses, 24.159.2102)
biennial continuing education credits,)
the adoption of NEW RULES I and II)
APRN practice and competence)
development, and the repeal of)
24.159.1404, 24.159.1411,)
24.159.1424, 24.159.1462,)
24.159.1466, and 24.159.1490)
standards related to APRNs)

TO: All Concerned Persons

1. On May 6, 2013, at 1.00 p.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing (board) no later than 5:00 p.m., on April 30, 2013, to advise us of the nature of the accommodation that you need. Please contact Cynthia Gustafson, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail nurse@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: At its April 7, 2011 meeting, the board formed a committee comprised of board members and a number of licensed APRNs familiar with current national standards and regulatory trends, to review the board's APRN rules and propose appropriate rule amendments. The committee held approximately 14 public meetings over the 15 months following the committee's formation. A primary goal of the committee's work was the

incorporation of the National Council of State Boards of Nursing's (NCSBN's) APRN Consensus Model into the board's rules.

Following the work and recommendations of this APRN rules committee, the board determined it is reasonably necessary to generally revise the board rules relating to advanced practice registered nurses (APRN), to update, clarify, harmonize, eliminate redundancies, create consistency, and to more closely conform to current national standards expressed in the *Consensus Model for APRN Regulation: Licensure, Accreditation, Certification & Education* (APRN Consensus Model). For example, the board is amending these rules to introduce the term "population focus" as the term is used in the APRN Consensus Model, as the board concluded it is an important, limiting element to guide an APRN's scope of practice in relation to the type of patients APRNs treat.

The board is updating the continuing education (CE) requirements that are relative to APRN endorsement and prescriptive authority to reflect current APRN certification and competence development requirements. The term "competence development" is a method to clarify and define the APRN's process in maintaining and improving knowledge, skills, and abilities necessary for practice, which also provides accountability to the public. It includes continuing education, quality assurance, and the maintenance of certification, along with appropriate documentation of each of these elements. These changes are proposed through the amendment or repeal of numerous rules and the adoption of New Rule II (APRN Competency Development).

The board is further amending the CE rules to acknowledge that APRNs need to obtain CE to maintain their certification, often in excess of the number required in board rules. The actual CE required and associated timeframe varies depending upon the APRN certification. The board is reducing the amount of CE the board requires of APRNs to be consistent with the CE required of LPNs and RNs. The board notes that this does not necessarily decrease the total amount of CE the APRN will need to obtain, as APRNs will still need to satisfy certification requirements to maintain licensure and prescriptive authority. These amendments may decrease the burden placed on the APRN to satisfy requirements from different authorities with various timeframes, without actually reducing the total amount of CE the APRN will need to obtain.

Additional amendments are technical in nature, such as renumbering or amending punctuation within certain rules following amendment and to comply with ARM formatting requirements. Accordingly, the board has determined that reasonable necessity exists to generally amend the APRN rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.159.301 DEFINITIONS (1) "Accrediting organization" means a professional organization that establishes standards and criteria for continuing education programs in nursing, advanced practice nursing, medicine, and other health care specialties.

(2) ~~"Advanced practice registered nurse~~ Practice Registered Nurse" or "APRN" means a registered nurse licensed by the board to practice as an advanced practice registered nurse pursuant to 37-8-202, MCA, and ARM 24.159.1414. ~~Four types of APRNs~~ APRN roles are recognized by Montana law:

(a) ~~nurse practitioner~~ Certified Nurse Practitioner (NP CNP);

(b) ~~certified nurse midwife~~ Certified Nurse Midwife (CNM);

(c) ~~certified registered nurse anesthetist~~ Certified Registered Nurse Anesthetist (CRNA); and

(d) ~~clinical nurse specialist~~ Clinical Nurse Specialist (CNS).

(3) remains the same.

(4) "Certifying body" means a national certifying organization that has been approved by the board to use psychometrically sound and legally defensible examinations for certification of ~~nursing specialties~~ in APRN roles and population focus.

(5) "Charge nurse Nurse" means the nurse who is in charge of patient and/or resident care during a nursing shift. An LPN may serve as a charge nurse in the absence of an RN in a long-term care facility, pursuant to 37-8-102, MCA.

(6) through (10) remain the same.

(11) "Department" means the Montana Department of Labor and Industry as provided for in Title 2, chapter 15, part 17, MCA.

(12) remains the same.

(13) "Direct supervision" means the supervisor is on the premises, and is quickly and easily available.

(14) through (24) remain the same.

(25) "Ordering" means authorizing durable medical devices and equipment, nutrition, diagnostic, and supportive services, including, but not limited to, home healthcare, hospice, and physical and occupational therapy.

(25) remains the same, but is renumbered (26).

~~(26)~~ (27) "Peer-reviewer" for APRN practice means a licensed APRN or physician whose credentials and practice encompass the APRN's scope and type of practice setting. The peer-reviewer may be a consultant working for a professional peer review organization.

(28) "Population focus" for APRN practice means the section of the population which the APRN is certified to practice within. The categories of population focus are: family/individual across the lifespan, adult-gerontology, neonatal, pediatrics, women's health/gender-related, or psychiatric/mental health.

~~(27)~~ (29) "Practical nurse Nurse" means the same thing as "~~licensed practical nurse~~ Licensed Practical Nurse," "PN," and "LPN," unless the context of the rule dictates otherwise. The practice of practical nursing is defined at 37-8-102, MCA.

~~(28)~~ (30) "Preceptorship" for APRN education means ~~practical supervised~~ training in the ~~specialized role, population focus, or specialty~~ area of APRN practice for which the applicant seeks licensure by the board.

(31) "Prescriber" as defined in 37-7-502, MCA, means a medical practitioner as defined in 37-2-101, MCA, licensed under the professional laws of the state to administer and prescribe medicine and drugs.

(29) remains the same, but is renumbered (32).

~~(30)~~ (33) "Prescription drug" as defined in 37-7-101, MCA, means ~~an order for a drug, as defined by 37-7-101, MCA, or any medicine, devices, or treatments~~ any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 353.

(31) remains the same, but is renumbered (34).

~~(32)~~ (35) "Registered nurse Nurse" means the same thing as "RN" and "professional nurse Professional Nurse," unless the context of the rule dictates otherwise. The practice of professional nursing is defined at 37-8-102, MCA.

(33) through (35) remain the same, but are renumbered (36) through (38).

~~(36)~~ (39) "Strategy of care" means the goal-oriented plan developed to assist individuals or groups to achieve optimum health potential. This includes initiating and maintaining comfort measures, promoting and supporting human functions and responses, establishing an environment conducive to well-being, providing health counseling and teaching, and collaborating on certain aspects of the medical regimen, including, but not limited to, the administration of medications and treatments.

(37) through (39) remain the same, but are renumbered (40) through (42).

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-101, 37-8-102, 37-8-202, 37-8-422, MCA

REASON: The board is adding the definition of "ordering" at (25), as it is within the APRN scope of practice as expressed in the APRN Consensus Model, but was not previously defined in board rule. In conjunction with the amendment to "prescription," this new definition will provide guidance for APRN practice by differentiating between the acts of ordering and prescribing.

24.159.1405 STANDARDS RELATED TO THE ADVANCED PRACTICE REGISTERED NURSE'S RESPONSIBILITIES AS A MEMBER OF THE NURSING PROFESSION NURSE (1) remains the same.

(a) ~~adhere to the standards for the RN in ARM 24.159.1205~~ Title 24, chapter 159, subchapter 12, Administrative Rules of Montana;

(b) ~~abide by the current practice standards and guidelines established by a national professional organization for the APRN's specialty area of practice as identified by the APRN~~ role and population focus;

(c) ~~possess the knowledge, judgment, and skill to safely and competently perform an APRN function~~ within the APRN's role and population focus; and

~~(d) submit documentation to the board of the APRN's quality assurance plan, as set forth by ARM 24.159.1466; and~~

~~(e) submit to the board verification of recertification by the national certifying body within 30 days of its expiration.~~

(d) adhere to the requirements for APRN competence development in ARM [New Rule II], APRN Competence Development.

(2) The APRN is accountable to patients, the nursing profession, and to the board for complying with the rules and statutes for the quality of advanced nursing care rendered, for recognizing limits of knowledge and experience, for planning for

the management of situations beyond the APRN's expertise, and for consultation with or referring patients to other health care providers as appropriate.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-202, 37-8-409, MCA

REASON: The board is replacing the reference to ARM 24.159.1205 with a broader reference to the entire RN rule subchapter to clarify RN licensure is a prerequisite for APRN endorsement. New Rule II (APRN Competence Development) will replace the quality assurance plan currently required in ARM 24.159.1466. With the repeal of the quality assurance rule, the board is deleting references to ARM 24.159.1466 from the APRN rules in subchapter 14.

24.159.1412 APPLICATION FOR INITIAL APRN LICENSURE (1) and (2) remain the same.

(3) The applicant shall request that an official transcript be sent to the board directly from the applicant's APRN program to verify the date of completion and degree conferred.

(4) remains the same.

(5) The applicant shall submit a copy of current national certification in APRN specialty role and population focus, congruent with education preparation.

(6) and (7) remain the same.

~~(8) Within one month of initiating APRN practice, the APRN must submit to the board a quality assurance plan, as outlined by ARM 24.159.1466.~~

(8) An additional application is needed for APRN prescriptive authority.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-1-134, 37-8-202, 37-8-409, MCA

24.159.1413 ADVANCED PRACTICE NURSING TITLE (1) Only a licensed RN holding a current Montana APRN license has the right to use the title of APRN, and the appropriate title of ~~the specialties of nurse practitioner~~ Certified Nurse Practitioner (NP CNP), certified nurse midwife Certified Nurse Midwife (CNM), certified registered nurse anesthetist Certified Registered Nurse Anesthetist (CRNA), or clinical nurse specialist Clinical Nurse Specialist (CNS).

~~(2) An APRN licensed in Montana may only practice in the specialized clinical area in which the APRN has current national certification.~~

(2) At a minimum, each CRNA and CNM shall use the designation of APRN and the certified role for purposes of identification and documentation:

(a) CRNA will use APRN-CRNA; and

(b) CNM will use APRN-CNM.

(3) At a minimum, each CNS and CNP shall use the designation of APRN followed by the certified role and population focus for purposes of identification and documentation. For example:

(a) a Family Nurse Practitioner would be designated as APRN-FNP;

(b) a Women's Health Nurse Practitioner would be designated as APRN-WHNP; and

(c) an Adult Clinical Nurse Specialist would be designated as APRN-ACNS.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-202, MCA

REASON: The board is amending this rule to update APRN titles to conform to national certification standards. Additionally, Clinical Nurse Specialist (CNS) and Certified Nurse Practitioner (CNP) are further amended to specify the population served, thus providing more transparency to the public.

24.159.1414 EDUCATIONAL REQUIREMENTS AND QUALIFICATIONS FOR APRN ~~(1) Applicants seeking APRN licensure in the specialties of CNM, NP, CRNA, or CNS must possess the following educational and certification qualifications:~~

~~(a) for those licensed in 2008 or after, a master's degree or post-graduate certificate from an accredited APRN program that provided a minimum of 250 hours of didactic instruction and a minimum of 500 hours of preceptorship;~~

~~(b) for those licensed between 1995 and 2007, a master's degree from an accredited nursing education program, or a certificate from an accredited post master's program as defined in (1)(c), which prepares the RN for the APRN recognition sought; and, individual certification from a certifying body. APRNs who completed an accredited APRN program and obtained national certification prior to June 30, 1995, may be recognized in Montana; or~~

~~(c) for those licensed prior to 1995, a degree from a post-basic professional nursing education program in an APRN specialty with the minimum length of one academic year consisting of at least 250 hours of didactic instruction and 400 hours under a preceptor; and, individual certification from a certifying body.~~

~~(2) Applicants seeking APRN licensure as a psychiatric CNS must possess a master's degree in nursing from an accredited nursing education program that integrates pharmacology and clinical practice.~~

~~(3) Applicants seeking APRN licensure must pass the examination of and be certified by a national certifying body in the congruent area of specialization.~~

~~(4) Contact information for national certifying bodies may be obtained from the board office.~~

(1) The APRN:

(a) must complete an accredited graduate-level education program which provides preparation in one of the four recognized APRN roles;

(b) must pass a national certification examination that measures APRN role and population focused competencies and maintain current certification;

(c) has acquired advanced clinical knowledge and skills preparing the APRN to provide direct care to patients, as well as a component of indirect care; however, the defining factor for all APRNs is that a significant component of the education and practice focuses on direct care of individuals;

(d) utilizes and builds upon the competency of RN practice by demonstrating a greater depth and breadth of knowledge, a greater synthesis of data, increased complexity of skills and interventions, and greater role autonomy;

(e) is educationally prepared to assume responsibility and accountability for health promotion and/or maintenance as well as the assessment, diagnosis, and management of patient health;

(f) must have acquired clinical experience of sufficient depth and breadth to reflect the intended role and population focus; and

(g) must have obtained licensure to practice as an APRN in one of the four APRN roles: Certified Registered Nurse Anesthetist (CRNA), Certified Nurse Midwife (CNM), Clinical Nurse Specialist (CNS), or Certified Nurse Practitioner (CNP).

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-202, 37-8-409, MCA

24.159.1418 LICENSURE BY ENDORSEMENT (1) through (1)(c) remain the same.

~~(d) completed application for prescriptive authority, if applicable;~~

~~(e) verification of prescriptive authority from all jurisdictions for preceding two years, if applicable;~~

~~(f) proof of completion of a minimum of 10 contact hours of continuing education within the preceding two years that meets the requirements of ARM 24.159.1468;~~

(d) verification of current national certification in APRN role and population focus; and

(g) (e) the required fees for APRN licensure by endorsement and prescriptive authority, if applicable, as specified by ARM 24.159.401.

(2) The board may, on a case-by-case basis, issue a license to an applicant for APRN licensure by endorsement, whose license is under investigation or in disciplinary action of a board in another jurisdiction, or to an applicant who is under investigation for a felony criminal offense.

(3) remains the same.

AUTH: 37-1-131, 37-8-202, 37-8-409, MCA

IMP: 37-1-131, 37-1-304, 37-8-409, MCA

REASON: The board is amending this rule to remove prescriptive authority requirements from this endorsement rule and relocating them to ARM 24.159.1463, which specifically addresses application for prescriptive authority.

24.159.1427 RENEWALS (1) remains the same.

~~(a) all continuing education requirements have been met during the renewal period; and~~

~~(b) the quality assurance plan has been followed; and peer review has occurred on a quarterly basis during the renewal period.~~

(c) the national professional organization practice standards and guidelines for appropriate role and population focus have been followed.

(2) If the APRN renewal application is submitted ~~on-line~~ online or postmarked after the renewal deadline, the applicant is subject to the late penalty fee specified in ARM 24.101.403.

(3) remains the same.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-8-202, MCA

REASON: In conjunction with the adoption of New Rule II and the repeal of ARM 24.159.1466, the board is amending this rule to remove the peer review requirement from APRN renewal. Due to the independent practice of APRNs and the increased national emphasis on the APRN's role and population focus, APRNs will now be required to affirm their adherence to the applicable practice standards and guidelines.

24.159.1428 INACTIVE APRN STATUS (1) A licensed APRN who wishes to retain a license, but who will not be practicing advanced practice nursing, may obtain an inactive status APRN license upon submission of an application to the board and payment of the appropriate fee.

(2) An APRN on inactive status may not practice advanced practice nursing during the period in which the licensee remains on inactive status.

(3) An APRN with an inactive license may not hold a prescriptive authority endorsement.

(3) through (4)(a) remain the same, but are renumbered (4) through (5)(a).

(b) affirmation of ~~20~~ 12 continuing education contact hours congruent with the APRN's specialty certification and obtained within 12 months prior to reactivation; and

(c) remains the same.

~~(5) To reactivate prescriptive authority, an APRN must affirm completion of ten continuing education contact hours in pharmacology and/or pharmacotherapeutics obtained within 12 months prior to reactivation.~~

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA

IMP: 37-1-131, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to add an express prohibition against prescriptive authority for inactive licensees in (3) to clarify that the act of prescribing is a part of the practice of advanced practice nursing. The board is also amending the continuing education requirements in this rule to reflect the proposed changes to ARM 24.159.2102 and the adoption of New Rule II.

24.159.1461 PRESCRIPTIVE AUTHORITY FOR ELIGIBLE APRNS (1) ~~An~~ Only an APRN granted prescriptive authority by the board may prescribe, procure, administer, and dispense drugs legend and controlled substances pursuant to applicable state and federal laws and within the APRN's role and population focus. ~~NPs, CRNAs, CNMs, and psychiatric CNSs with unencumbered licenses may hold prescriptive authority.~~

(2) Prescriptive authority permits the APRN to receive, sign for, record, and distribute pharmaceutical samples to patients in accordance with applicable state and federal Drug Enforcement Administration laws, regulations, and guidelines and

~~to prescribe, dispense, and administer prescription drugs in the prevention of illness, the restoration of health, and/or the maintenance of health in accordance with 37-2-104, MCA.~~

~~(3) The board notifies the Board of Pharmacy in a timely manner when the status of an APRN's prescriptive authority changes. All APRNs who hold an unencumbered license and meet the qualifications for prescriptive authority within ARM 24.159.1463 may hold prescriptive authority.~~

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-202, MCA

REASON: Although the APRN Consensus Model ties prescriptive authority to APRN licensure, the board requires a separate review of qualifications prior to granting prescriptive authority. These amendments are necessary to bring the board's rules into line with the APRN Consensus Model, with the exception that prescriptive authority shall only be granted upon application and subject to qualifications as established by board rule. These amendments correspond with changes proposed in ARM 24.159.1463.

24.159.1463 INITIAL APPLICATION FOR PRESCRIPTIVE AUTHORITY

~~(1) The APRN shall submit a completed application for prescriptive authority and a nonrefundable fee as specified in ARM 24.159.401. The application for all APRNs except practicing CRNAs must include:~~

~~(a) evidence of successful completion of a graduate level course that provides a minimum of the equivalent of three academic semester credit hours (equaling a minimum of 45 contact hours) from an accredited program in pharmacology, pharmacotherapeutics, and the clinical management of drug therapy related to the applicant's area of specialty. The academic credits must be obtained within a three-year period immediately prior to the date the application is received at the board office and must meet the following requirements:~~

~~(i) no more than six of the 45 contact hours may concern the study of herbal or complementary therapies;~~

~~(ii) a minimum of 18 of the 45 contact hours must have been obtained within one year immediately prior to the date of application; and~~

~~(iii) a minimum of one-third of all contact hours must be face-to-face or interactive instruction.~~

~~(b) evidence of the course content and clinical preceptorship;~~

~~(c) a copy of the current certification from the APRN's national certifying body;~~

~~(d) a description of the proposed practice sites and typical caseload; and~~

~~(e) an updated quality assurance plan, if needed, as required by ARM 24.159.1466.~~

~~(2) Practicing CRNAs may qualify for prescriptive authority by meeting the continuing education requirements of ARM 24.159.1418.~~

(1) The APRN seeking prescriptive authority shall submit a completed application and the appropriate fee for prescriptive authority as specified in ARM 24.159.401.

(2) The APRN seeking prescriptive authority who has graduated from an accredited program in the last five years shall submit:

(a) evidence of successful completion of a graduate level course of three semester credits in advanced pharmacology that includes instruction in pharmacodynamics, pharmacokinetics, and pharmacotherapeutics of all broad categories of agents;

(b) evidence of successful completion of a graduate level course that includes differential diagnosis/disease management; and

(c) evidence of supervised clinical practice that integrates pharmacologic intervention with patient management.

(3) The APRN seeking prescriptive authority who has graduated more than five years ago from an accredited program must complete either a graduate level course of three semester credits or 45 contact hours of continuing education that includes instruction in pharmacodynamics, pharmacokinetics, and pharmacotherapeutics of all broad categories of agents.

(4) The APRN with prescriptive authority from another board jurisdiction shall submit a completed application and the appropriate fees for prescriptive authority as specified in ARM 24.159.401. The application must include evidence of a current unencumbered APRN license with prescriptive authority in another board jurisdiction.

(3) and (4) remain the same, but are renumbered (5) and (6).

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-202, MCA

REASON: Previously any CNP, CNM, or CRNA could apply for prescriptive authority, but only psychiatric/mental health CNSs were allowed to apply. APRN education has evolved, and national standards are moving towards preparing all APRNs (including CNSs) to prescribe. This amendment provides for any APRN who can demonstrate the appropriate qualifications to be granted prescriptive authority. The board is amending this rule with the understanding that currently most APRNs are receiving the qualifications required by board rule.

24.159.1464 PRESCRIBING PRACTICES (1) through (2)(d) remain the same.

~~(e) (g) Drug Enforcement Administration (DEA) number of the prescriber on all scheduled drugs; and~~

(e) number of refills;

~~(f) all requirements of state and federal regulations regarding prescriptions.~~

(f) signature of the prescriber on written prescriptions; and

(3) remains the same.

(4) An APRN with prescriptive authority shall comply with federal DEA requirements for controlled substances and shall file DEA registrations and numbers with the board.

(5) through (7) remain the same.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-202, MCA

REASON: The board is deleting the requirement to file DEA registrations and numbers with the board because it is not the practice of the board to maintain records of that information.

24.159.1467 SUSPENSION OR REVOCATION OF PRESCRIPTIVE AUTHORITY (1) The board may suspend or revoke an APRN's prescriptive authority when ~~one or more of the following occur:~~

~~(a) the APRN has not met the requirements for renewal of prescriptive authority set by ARM 24.159.1461 through 24.159.1464 and 24.159.1466 through 24.159.1468;~~

~~(b) the APRN has not met requirements necessary to maintain APRN licensure;~~

~~(c) the APRN has violated rules pertaining to prescriptive authority contained in this subchapter; or~~

~~(d) the APRN has violated state or federal law or regulations applicable to prescriptions.~~

~~(2) The APRN whose prescriptive authority has been suspended or revoked may not prescribe medications until the APRN has received written notice from the board that prescriptive authority has been reinstated.~~

AUTH: 37-1-131, 37-1-136, 37-8-202, MCA

IMP: 37-1-131, 37-1-136, 37-8-202, MCA

REASON: The board determined it is reasonably necessary to amend this rule to allow the board to revoke or suspend an APRN's prescriptive authority for reasons other than those currently in rule. This expanded rule takes into account the fact that prescriptive authority is a license that may be subjected to board discipline.

24.159.1468 PRESCRIPTIVE AUTHORITY RENEWAL (1) through (2)(a) remain the same.

(b) affirmation of a minimum of ~~ten~~ 12 contact hours of accredited education in pharmacology, pharmacotherapeutics, and/or clinical management of drug therapy completed during the two years immediately preceding the effective date of the prescriptive authority renewal period. ~~Contact hours for prescriptive authority renewal must; and~~

~~(i) be provided by advanced academic education or educational programs approved by an accrediting organization;~~

~~(ii) include a minimum of four contact hours of face-to-face or interactive instruction; and~~

~~(iii) the majority of the contact hours must concern the study of pharmaceutical medications and not herbal or complementary therapies.~~

(c) these contact hours can be used to satisfy 12 of the required 24 contact hours to renew the APRN license.

~~(3) The prescriptive authority contact hours are in addition to contact hours required to renew the general APRN license.~~

~~(4)~~ (3) When an APRN fails to renew prescriptive authority prior to the renewal date of that authority, the APRN's prescriptive authority will lapse and expire after 45 days. The APRN whose prescriptive authority has expired may not prescribe until the board has reinstated the APRN's prescriptive authority and must reapply for prescriptive authority under the requirement in ARM 24.159.1463.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-202, MCA

REASON: The board determined that it is reasonably necessary to amend this rule to address the unnecessarily restrictive limitations on acceptable continuing education for prescriptive authority renewal. Travel for face-to-face instruction is difficult for licensees in rural Montana and many excellent distance-learning alternatives exist. The board is aware of no evidence that face-to-face instruction is superior to the alternatives, and consistent with the independent practice of APRNs in Montana, the board concluded that APRNs can be trusted to obtain the type of learning experience that satisfies their learning style and professional needs. The board is also amending this rule to align it with the APRN Consensus Model.

24.159.1470 CERTIFIED NURSE PRACTITIONER PRACTICE (1) ~~Nurse practitioner~~ Certified Nurse Practitioner (NP CNP) practice means the independent and/or collaborative management of primary and/or acute health care of individuals, families, and communities including: across settings. The CNP is certified in acute or primary care and in the population focus of adult/geriatric, pediatric, neonatal, family/individual health across the lifespan, women's/gender-related, and/or psychiatric/mental health.

~~(a) assessing the health status of individuals and families using methods appropriate to the client population and area of practice such as health history taking, physical examination, and assessing developmental health problems.~~

~~(b) instituting and facilitating continuity of health care to clients, including:~~

~~(i) ordering durable medical equipment, treatments and modalities, and diagnostic tests;~~

~~(ii) receiving and interpreting results of diagnostic procedures;~~

~~(iii) making medical and nursing diagnoses; and~~

~~(iv) working with clients to promote their understanding of and compliance with therapeutic regimens.~~

~~(c) promoting wellness and disease prevention programs;~~

~~(d) referring clients to a physician or other health care provider, when appropriate;~~

~~(e) providing instruction and counseling to individuals, families, and groups in the areas of health promotion and maintenance, including involving such persons in planning for their health care; and~~

~~(f) working in collaboration with other health care providers and agencies to provide and, where appropriate, coordinate services to individuals and families.~~

~~(2) Every licensed NP shall abide by the practice standards and guidelines established by a NP national professional organization as identified by the NP.~~

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

REASON: The board is adopting New Rule I (APRN Practice) to update and clarify the definition of APRN practice, consistent with national standards. In conjunction with the addition of New Rule I, the common elements found in this rule and ARM 24.159.1475, 24.159.1480, and 24.159.1485 are being deleted to eliminate redundancy. In addition, the board is amending each of these rules to clarify the role and population focus for each APRN type, consistent with the APRN's certification, and to incorporate the central emphasis of role and population focus from the APRN Consensus Model.

24.159.1475 CERTIFIED NURSE MIDWIFERY PRACTICE (1) Certified ~~nurse midwifery~~ Nurse Midwifery (CNM) practice means the independent and/or collaborative management of care of ~~essentially normal newborns, providing perinatal and general women's healthcare within a health care system that provides for medical consultation, collaborative management, and referral~~ women throughout the lifespan. The CNM is certified in the population focus of women's/gender-related health and provides a full range of primary health care services to women throughout the lifespan, including gynecologic care, family planning services, preconception care, prenatal and postpartum care, childbirth, and the care of the newborn in diverse settings. The practice includes treating the male partner of their female clients for sexually transmitted diseases and for reproductive health.

~~(2) All licensed CNMs shall be enrolled in either the certification maintenance program or the continuing competency assessment program through the American College of Nurse Midwives.~~

~~(3) Every licensed CNM shall abide by the practice standards and guidelines established by a CNM national professional organization as identified by the CNM.~~

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

24.159.1480 CERTIFIED REGISTERED NURSE ANESTHETIST PRACTICE

(1) Certified ~~registered nurse anesthetist~~ Registered Nurse Anesthetist (CRNA) practice is the independent and/or collaborative performance of ~~or the assistance in~~ any act involving the determination, preparation, administration, or monitoring of any drug used in the administration of anesthesia or related services for surgical and other therapeutic procedures that require the presence of persons educated in the administration of anesthetics anesthesia care and anesthesia-related services, and the management of acute and chronic pain. The CRNA is certified in the population of family/individual health across the lifespan whose health status may range from healthy through all recognized levels of acuity, including persons with immediate, severe, or life-threatening illnesses or injuries in diverse settings.

~~(2) Every licensed CRNA shall abide by the practice standards and guidelines established by a CRNA national professional organization as identified by the CRNA.~~

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

24.159.1485 CLINICAL NURSE SPECIALIST PRACTICE (1) Clinical nurse specialist Nurse Specialist (CNS) practice means the independent and/or collaborative delivery and management of ~~expert level nursing care to individuals, families, or groups, including the ability to:~~ and communities. CNS practice integrates nursing practice, which focuses on assisting patients in the prevention or resolution of illness, with medical diagnosis and treatment of disease, injury, and disability. In addition to providing direct patient care, CNSs influence care outcomes by providing expert consultation for nursing staff and by implementing improvements in health care delivery systems. CNS certification may include the population focus of adult/geriatric, pediatric, neo-natal, family/individual, and/or psychiatric/mental health.

- ~~(a) assess the health status of individuals and families using methods appropriate to the client population and area of practice;~~
 - ~~(b) diagnose human responses to actual or potential health problems using the nursing process;~~
 - ~~(c) plan for health promotion, disease prevention, and/or therapeutic intervention in collaboration with the client. The goal is to enhance the problem-solving and self-care abilities of the client whenever and to whatever extent possible. The clinical nurse specialist works with other health care providers to maximize resources available to the client and family;~~
 - ~~(d) implement therapeutic interventions based on the clinical nurse specialist's area(s) of expertise, including but not limited to:~~
 - ~~(i) direct nursing care;~~
 - ~~(ii) ordering durable medical equipment;~~
 - ~~(iii) ordering nonpharmacological treatment;~~
 - ~~(iv) providing medications or treatments according to protocol;~~
 - ~~(v) receiving and monitoring diagnostic procedures according to protocols;~~
 - and
 - ~~(vi) counseling and/or teaching.~~
 - ~~(e) refer for additional health care as necessary and appropriate;~~
 - ~~(f) coordinate health care as necessary and appropriate;~~
 - ~~(g) evaluate, with the client, the effectiveness of care;~~
 - ~~(h) educate clients, families, other health care professionals, and the public;~~
 - ~~(i) engage in research activities; and~~
 - ~~(j) provide consultation to other health care providers.~~
- ~~(2) Every licensed CNS shall abide by the practice standards and guidelines established by a CNS national professional organization as identified by the CNS.~~

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

24.159.2102 BIENNIAL CONTINUING EDUCATION REQUIREMENTS
(1) through (1)(b) remain the same.

(c) APRNs must complete a minimum of ~~40~~ 24 contact hours during the two-year renewal period that meet the requirements set forth in ARM ~~24.159.1425~~ [NEW RULE II], ~~in addition to the ten~~ with 12 contact hours of the continuing education required in pharmacotherapeutics, where no more than two pharmacology contact hours may concern the study of herbal or complementary therapies for maintaining prescriptive authority, if applicable, as set forth in ARM 24.159.1468.

(2) through (6) remain the same.

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, MCA

5. The proposed new rules provide as follows:

NEW RULE I APRN PRACTICE (1) The APRN licensed in Montana may only practice in the role and population focus in which the APRN has current national certification. APRN practice is an independent and/or collaborative practice and may include:

(a) establishing medical and nursing diagnoses, treating, and managing patients with acute and chronic illnesses and diseases; and

(b) providing initial, ongoing, and comprehensive care, including:

(i) physical examinations, health assessments, and/or other screening activities;

(ii) prescribing legend and controlled substances when prescriptive authority is successfully applied for and obtained;

(iii) ordering durable medical equipment, diagnostic treatments and therapeutic modalities, laboratory imaging and diagnostic tests, and supportive services, including, but not limited to, home healthcare, hospice, and physical and occupational therapy;

(iv) receiving and interpreting results of laboratory, imaging, and/or diagnostic studies;

(v) working with clients to promote their understanding of and compliance with therapeutic regimens;

(vi) providing instruction and counseling to individuals, families, and groups in the areas of health promotion, disease prevention, and maintenance, including involving such persons in planning for their health care; and

(vii) working in collaboration with other health care providers and agencies to provide and, where appropriate, coordinate services to individuals and families.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-202, 37-8-409, MCA

NEW RULE II APRN COMPETENCE DEVELOPMENT (1) The APRN is expected to engage in ongoing competence development. Competence development is the method by which an APRN gains, maintains, or refines practice, knowledge, skills, and abilities. This development can occur through formal education programs, continuing education, or clinical practice and is expected to continue throughout the APRN's career. Documentation of competence

development activities should be retained by the APRN for a minimum of five years and must be made available to the board upon request. The APRN must:

(a) submit verification of national recertification to the board within 30 days of issuance; and

(b) complete 24 contact hours of continuing education during each two-year license renewal period as stated in ARM Title 24, subchapter 21, Renewals and Continuing Education; and

(i) For the APRN who holds prescriptive authority, 12 of the 24 contact hours must be in pharmacotherapeutics, where no more than two of these contact hours may concern the study of herbal or complementary therapies.

(ii) At renewal, APRN licensees licensed by examination less than one full year are not required to complete the 24 contact hours. APRN licensees licensed by examination at least one year, but less than two full years, shall complete one-half of the credit required for renewal.

(c) maintain an individualized quality assurance plan that:

(i) is relevant to the APRN's role and population focus, practice setting, and level of experience;

(ii) may include peer review, institutional review, and/or self-assessment;

(iii) includes methods for maintaining continued competence in providing patient care and evaluating patient outcomes; and

(iv) meets the standards set by the APRN's national professional organization.

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA

IMP: 37-1-131, 37-8-202, 37-8-409, MCA

6. The rules proposed to be repealed are as follows:

24.159.1404 STANDARDS RELATED TO THE ADVANCED PRACTICE REGISTERED NURSE'S RESPONSIBILITY TO APPLY THE NURSING PROCESS found at ARM page 24-16655.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-202, MCA

REASON: This board is repealing this rule because updated language and current practice standards are proposed in New Rule I (APRN Practice) in this notice.

24.159.1411 TEMPORARY PERMITS FOR GRADUATE APRNS found at ARM page 24-16661.

AUTH: 37-8-202, 37-8-409, MCA

IMP: 37-8-202, 37-8-409, MCA

REASON: The board is repealing this rule as obsolete, since national certifying bodies for APRN certification provide examinations and results in a timely manner, whereas historically there was a significant delay that justified the need for this rule.

This rule is also being repealed because the board is concerned that an APRN graduate should not be allowed to perform advanced practice nursing before becoming certified.

24.159.1424 CONTINUING EDUCATION REQUIREMENTS found at ARM page 24-16665.

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA
IMP: 37-1-131, 37-1-141, 37-8-202, MCA

REASON: This rule is being repealed in conjunction with the adoption of New Rule II (APRN Competence Development).

24.159.1462 ADVANCED PRACTICE NURSING COMMITTEE found at ARM page 24-16685.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

REASON: The board is repealing this rule as unnecessary, since there no longer exists a desire or need for a standing committee for the purposes identified in this rule. Moreover, the existing APRN committee has not been used for the stated purposes for a number of years, as department staff typically fulfills these roles.

24.159.1466 QUALITY ASSURANCE OF APRN PRACTICE found at ARM page 24-16688.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

REASON: This rule is being repealed in conjunction with the adoption of New Rule II (APRN Competence Development).

24.159.1490 PSYCHIATRIC-MENTAL HEALTH PRACTITIONER PRACTICE found at ARM page 24-16702.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

REASON: Consistent with the APRN Consensus Model, this rule is unnecessary since psychiatric CNSs and psychiatric CNPs are no longer distinguishable as independent APRN types.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513,

Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., May 14, 2013.

8. An electronic copy of this Notice of Public Hearing is available through the department and board's web site at www.nurse.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

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

11. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
HEATHER O'HARA, RN, PRESIDENT

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 1, 2013

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.210.426 and 24.210.805)
trust account requirements,)
24.210.430 internet advertising rules,)
and 24.210.601 general license)
administration requirements)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 6, 2013, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation (board) no later than 5:00 p.m., on April 29, 2013, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdrre@mt.gov.

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

24.210.426 TRUST ACCOUNT REQUIREMENTS (1) remains the same.

(2) The broker will not be disciplined for a negative account balance that occurs only as the result of a deposit that was dishonored after the financial institution had indicated the funds were available.

(2) through (4)(k) remain the same, but are renumbered (3) through (5)(k).

~~(l) Trust account records and related real estate documents, including sales contracts, leases, and options, agency agreements, closing statements, and other real estate related documents shall be maintained for eight years from the date of receipt of any funds or property;~~

(m) (l) The board is authorized to examine each broker's trust account and related real estate documents. Such examination will be conducted by a board representative and will be at such time as the board representative may request during normal business hours. The broker is required to fully cooperate with the board representative; and

~~(n)~~ (m) A salesperson, or a broker who has delegated the broker's obligation to maintain a trust account to a designated broker pursuant to (1), shall place all funds for deposit in the custody of the supervising or designated broker in adequate

time for the supervising or designated broker to comply with all trust account requirements.

(5) through (9) remain the same, but are renumbered (6) through (10).

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-316, 37-1-319, 37-51-202, 37-51-313, 37-51-321, 37-51-324, 37-51-503, MCA

REASON: The board is adding (2) to this rule to clearly inform licensees that the board will not hold the licensee responsible for a negative trust account balance as a result of draft deposits that were ultimately dishonored, if the broker has done due diligence in attempting to verify the existence of the funds. The exemption is very limited in scope and requires the licensee to actively attempt to verify the trust funds were deposited before the exemption would apply. The licensee remains responsible for ensuring that fees assessed by the bank are not paid with client trust funds. This amendment is reasonably necessary to address a number of questions received by the board on the ramifications of a negative trust account balance as a result of nonsufficient funds deposits.

The board is relocating the document retention requirement from this rule and relocating it to ARM 24.210.601. The board intends that document retention should occur in all real estate transactions involving a licensee, not just when a broker maintains a trust account. The board concluded that due to its location in the trust account section, the records retention requirement could be misunderstood as only applying to licensees maintaining trust accounts. This move will address this potential for misunderstanding.

24.210.430 INTERNET ADVERTISING RULES (1) Licensees who engage in any form of Internet advertising, including, but not limited to, web sites, blogs, video streaming, and social media, either directly or indirectly, shall comply with the Internet advertising rules set out in this rule. This rule does not apply to traditional forms of advertising or promotion, such as newspaper, television, radio advertisements, yard signs, or direct mailings.

(2) and (3) remain the same.

(4) Licensees' Internet advertising may include real properties on which neither the licensee nor the brokerage company is the listing agent, so long as the listing agent has offered cooperation and has consented to Internet advertising by the licensee engaging in the Internet advertising, and the owners of the property have consented to the same.

(a) The offer of cooperation and consent to Internet advertising may arise pursuant to the rules and regulations of a multiple listing service in which the listing agent and the licensee, engaging in the Internet advertising, are both participating (provided the multiple listing system gives the listing agents the option of prohibiting Internet advertising of some or all of their listings by some or all of the participants on that multiple listing system) or by specific written agreement between them.

(b) The owner's consent may be included in the listing agreement and need not identify the specific licensee to whom consent to Internet advertising is given.

(c) Licensees' Internet advertising of real properties, on which neither the licensee nor the brokerage company is the listing agent, must set forth as part of the property information, a statement that the subject property is listed with another licensee or brokerage company and shall identify the listing agent or brokerage company.

(d) The content of any property data obtained from another listing agent or multiple listing system may not be changed in whole or in part. However, such property data may be formatted differently, and be condensed, and further advertised if the advertisement contains the following statement or similar language: "The foregoing material was abstracted from another source and does not contain all of the information available at the source site. Please request further information when considering this property."

(e) No licensee shall be responsible for errors or misrepresentations of others who reproduce or further disseminate the information concerning the licensee's listings, unless the licensee originated the error or misrepresentation, or failed to update the information.

(5) and (6) remain the same.

(7) ~~When a third party controls or manages the web site or medium displaying the Internet advertising, on behalf of a licensee, the~~ The licensee is responsible to assure such the accuracy of Internet advertising and the third party comply with the provisions of this rule published or disseminated by another person or another party under the direction of the licensee.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-102, 37-51-103, 37-51-301, 37-51-321, MCA

REASON: The board determined it is reasonably necessary to amend (1) and provide examples of the wide variety of Internet advertising opportunities and options available to licensees. The board intends for the rule to be broadly applied and cover all of the advertising examples, as well as other forms of Internet advertising not specifically listed. The board concluded that this amendment will help address licensee confusion in this area.

The board is further dividing (4) into subsections for greater clarity and ease of use for licensees. The board is also amending (4)(e) and (7) to clarify licensee responsibility regarding inaccuracies in Internet advertising that is not originated by the licensee. The amendments explain that the board will hold licensees responsible for inaccurate information published under the licensee's direction and for misrepresentations of others if the licensee fails to update. This amendment will help address licensee confusion as to their responsibility for the accuracy and updating of Internet advertising.

Licensees are responsible for advertising content they can control either directly or indirectly, through an employee, agent, or third party or company that manages or displays the Internet advertising on behalf of the licensee. Internet advertising is becoming more of an issue for real estate licensees as their site information is being "scraped" and posted on other web sites. The board is attempting to clarify what they consider the licensee's area of responsibility, and that

responsibility does not carry over to that "scraped"/reproduced information, unless it is distributed on behalf of the licensee.

24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) Trust account records and real estate related documents, including sales contracts, leases and options, agency agreements, closing statements, and all other real estate related documents shall be maintained for eight years from the latter of the date of receipt or the date the transaction was completed.

(1) through (15) remain the same, but are renumbered (2) through (16).

~~(46)~~ (17) An active, licensed salesperson may be temporarily associated with a supervising broker, other than the existing supervising broker of record listed on the salesperson's pocket card, as follows:

(a) through (g) remain the same.

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

(a) and (b) remain the same.

(c) Supervision of the salesperson may be transferred to a temporary supervising broker as provided in ~~(46)~~ (17). However, the authorization set forth in ~~(46)(a)~~ (17)(a) shall not be required.

(18) remains the same, but is renumbered (19).

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-202, 37-51-301, 37-51-305, 37-51-308, 37-51-309, 37-51-313, MCA

REASON: The board determined it is reasonably necessary to amend this rule by adding the records retention requirement currently located in ARM 24.210.426. The board intends for the records retention requirement to apply to all licensees involved in real estate transactions, not just when a broker maintains a trust account. The board concluded that this provision is more appropriately located in this rule.

24.210.805 PROPERTY MANAGEMENT TRUST ACCOUNT

REQUIREMENTS (1) remains the same.

(2) The property manager will not be disciplined for a negative account balance that occurs only as the result of a deposit that was dishonored after the financial institution had indicated the funds were available.

(2) through (4) remain the same, but are renumbered (3) through (5).

~~(5)~~ (6) All monies belonging to others, which are received by a property manager in a residential lease or rental transaction, must be deposited in the property manager's trust account within three business days. All monies belonging to others, which are received by a property manager in a nonresidential lease or rental transaction, must be deposited into the property manager's trust account within three business days, unless otherwise provided in the lease or rental agreement.

(a) and (b) remain the same.

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

~~(7)~~ (8) Except for personal funds referenced in ~~(3)~~ (4), no payments of personal indebtedness of the property manager shall be made from such trust accounts or trust funds.

~~(8)~~ (9) Money held in the trust account, which is due and payable to the property manager, must be withdrawn within ten business days after such money becomes due and payable, or when the owner and tenant ledgers are reconciled, except as exempted in ~~(4)~~ (5).

(9) through (12) remain the same, but are renumbered (10) through (13).

~~(13)~~ (14) Every property manager shall keep all records required by ~~(9)~~ (10) and complete files of properties managed (property management agreement, rental agreement, and all transactions concerning the property in which the property manager was involved) for not less than eight years from the date the property management agreement terminates.

~~(14)~~ (15) All required trust account records may be maintained electronically, but must be maintained in a manner to permit auditing.

(15) remains the same, but is renumbered (16).

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-316, 37-1-319, 37-51-202, 37-51-321, 37-51-601, MCA

REASON: The board is adding (2) to this rule to clearly inform licensees that the board will not hold the licensee responsible for a negative trust account balance as a result of draft deposits that were ultimately dishonored, if the property manager has done due diligence in attempting to verify the existence of the funds. The exemption is very limited in scope and requires the licensee to actively attempt to verify the trust funds were deposited before the exemption would apply. The board notes that the licensee remains responsible for ensuring that fees assessed by the bank are not paid with client trust funds. This amendment is reasonably necessary to address questions posed to the board on the ramifications of a negative trust account balance as a result of nonsufficient funds deposits.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., May 14, 2013.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's web site at www.realestate.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical

problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2323; e-mailed to dlibsdrre@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
C.E. "ABE" ABRAMSON, PRESIDING
OFFICER

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 1, 2013

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.2.405, 32.3.502, 32.18.101,	)	AMENDMENT
and 32.18.110 pertaining department)	
of livestock miscellaneous fees,	)	NO PUBLIC HEARING
official trichomoniasis testing and	)	CONTEMPLATED
certification requirements, hot iron)	
brands required, freeze branding, and)	
recording and transferring of brands)	

TO: All Concerned Persons

1. On June 6, 2013, the Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and 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, May 10, 2013 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.2.405 DEPARTMENT OF LIVESTOCK MISCELLANEOUS FEES

- | | |
|--|----------------|
| <u>(1) brand book - CD</u> | <u>\$15.00</u> |
| <u>(2) brand book - data download (limited counties)</u> | <u>\$15.00</u> |
| <u>(3) brand book - paper copy (per county)</u> | <u>\$30.00</u> |

(1) through (15) remain the same but are renumbered (4) through (18).

AUTH: 81-1-102, 81-22-102, MCA
 IMP: 81-1-107, 81-3-205, 81-3-211, 81-8-304, 81-9-112, MCA

32.3.502 OFFICIAL TRICHOMONIASIS TESTING AND CERTIFICATION REQUIREMENTS (1) ~~Test eligible bovines imported into Montana and test eligible bovines sold, loaned, leased, or otherwise acquired in or from trichomoniasis epizootic areas in Montana, except as provided in ARM 32.3.212, must be negative T. fetus bulls.~~ Test eligible bovines include those:

- (a) imported into Montana; or
- (b) sold, loaned, leased, or otherwise acquired in trichomoniasis epizootic areas in Montana; or

(c) originating from trichomoniasis epizootic areas in Montana.

(a) and (b) remain the same but are renumbered (2) and (3).

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA

IMP: 81-2-102, 81-2-703, MCA

32.18.101 HOT IRON BRANDS REQUIRED (1) Under the brand laws of the state only hot iron brands will be recognized by the Department of Livestock, Brands Enforcement Division on all livestock, ~~for sheep, goats, and swine~~ with the following exceptions that freeze brands may be applied to:

(a) ~~freeze brands may be applied to~~ horses, mules, or asses; and

(b) ~~freeze brands on cattle are allowed~~ only as provided in ARM 32.18.109.

(2) The hot iron or freeze brand must peel or heal to be valid for ownership.

(3) Fresh brands shall not be used to transfer ownership without bill of sale to prove ownership.

(4) A bill of sale may also be required to prove ownership of livestock with multiple brands.

AUTH: 81-1-102, MCA

IMP: 81-1-102, MCA

32.18.110 RECORDING AND TRANSFERRING OF BRANDS (1) through (6)(a) remain the same.

(b) if the original owner of the transferring brand is deceased, a ~~certified~~ copy of the death certificate and ~~certified~~ power of attorney or appropriate documentation must be provided to complete the transfer;

(c) through (11) remain the same.

AUTH: 81-1-102, MCA

IMP: 81-1-102, MCA

REASON: The department has received requests for copies of the brand holders within the state or for individual or multiple counties within the state. The department developed processes to provide brand books to accommodate the increasing requests at a minimal expense to the department. Department costs for research, information technology personnel time, processing, and supplies have been formulated for providing information on a CD, by data download or by paper copy and fees established commensurate with expenses.

Changes to the official trich testing and certification requirements are to more clearly define the meaning of test eligible bovines.

Certified copies for transfer are no longer required per state statute except for documents pertaining to real estate.

The fees charged by the department will potentially affect approximately 500 people who may request brand book data. The cumulative amount of the brand data fee increase will be \$7,500 based on this number of requests. The fees no longer charged for separate freeze brand certificates will affect approximately 50 people. The cumulative amount of freeze brand fee decrease will be \$500.

4. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 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., May 15, 2013.

5. If persons who are directly affected by the proposed action wish to express their data, views, and 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. May 15, 2013.

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 persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected have been determined to be more than 25, based upon the population of the state.

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. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay
Christian Mackay
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ George H. Harris
George H. Harris
Rule Reviewer

Certified to the Secretary of State April 1, 2013.

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

In the matter of the amendment of) AMENDED NOTICE OF PUBLIC
ARM 37.114.101, 37.114.105,) HEARING ON PROPOSED
37.114.201, 37.114.203, 37.114.204,) AMENDMENT AND REPEAL
37.114.205, 37.114.301, 37.114.312,)
37.114.313, 37.114.314, 37.114.315,)
37.114.501, 37.114.503, 37.114.512,)
37.114.515, 37.114.530, 37.114.531,)
37.114.540, 37.114.542, 37.114.546,)
37.114.552, 37.114.561, 37.114.563,)
37.114.571, and 37.114.583, and the)
repeal of ARM 37.114.504,)
37.114.506, 37.114.507, 37.114.509,)
37.114.510, 37.114.514, 37.114.516,)
37.114.518, 37.114.519, 37.114.521,)
37.114.522, 37.114.524, 37.114.525,)
37.114.528, 37.114.533, 37.114.534,)
37.114.536, 37.114.537, 37.114.539,)
37.114.544, 37.114.548, 37.114.549,)
37.114.551, 37.114.554, 37.114.555,)
37.114.557, 37.114.558, 37.114.560,)
37.114.565, 37.114.566, 37.114.568,)
37.114.570, 37.114.573, 37.114.574,)
37.114.575, 37.114.577, 37.114.578,)
37.114.579, 37.114.581, 37.114.582,)
37.114.585, 37.114.588, 37.114.589,)
37.114.591, 37.114.592, and)
37.114.595, pertaining to)
communicable disease control)

TO: All Concerned Persons

1. On January 17, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-624 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 14 of the 2013 Montana Administrative Register, Issue Number 1.

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 Department of Public Health and Human Services no later than 5:00 p.m. on April 16, 2013, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena

MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The department found several typographical errors in the proposed rule notice and is correcting those errors. In ARM 37.114.105 the department is correcting an error in a telephone number and in ARM 37.114.203 and 37.114.204 the department is correcting the spelling of the word "dengue."

In ARM 37.114.204(2)(a)(iv), the department is adding terms for clarification in recognition that mortality and hospitalization reporting is needed for all cases. "Influenza-associated mortality, pediatric" is now going to read "Influenza-associated hospitalization and mortality."

In ARM 37.114.204(3), the department is removing the term "suspected" in recognition of reporting problems associated with the subjective nature of the term "suspected" specifically as it applies to aggregate influenza reporting.

The department received comments internally and was questioned by the Centers for Disease Control and Prevention on whether our state department of health had Carbapenen-Resistant Enterobacteriaceae (CRE) reporting. Research indicated the importance of laboratory reporting of CRE and made a change in ARM 37.114.313 as a result to incorporate CRE laboratory-based reporting.

The department received notice of changes to Centers for Disease Control and Prevention (CDC) guidance documents regarding pertussis control measures after the public hearing. Changes were made to ARM 37.114.563 to better align with the new CDC information.

4. The rules as proposed are being amended as follows, new matter underlined, deleted matter interlined:

37.114.105 INCORPORATION BY REFERENCE (1) The department adopts and incorporates by reference the following publications:

(a) remains as proposed.

(b) The "2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings" published by the U.S. Centers for Disease Control and Prevention, which specifies precautions that should be taken to prevent transmission of communicable diseases for cases admitted to a hospital or other health care facility. A copy of this document is available from the Department of Public Health and Human Services, Public Health and Safety Division, Communicable Disease Epidemiology Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951, phone: (406) 444-~~0272~~ 444-0273.

(c) remains as proposed.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.114.203 REPORTABLE DISEASES AND CONDITIONS (1) The following communicable diseases and conditions are reportable:

- (a) through (o) remain as proposed.
- (p) ~~Denque~~ Dengue virus infections;
- (q) through (bp) remain as proposed.

AUTH: 50-1-202, 50-17-103, 50-18-105, 50-18-106, MCA

IMP: 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.204 REPORTS AND REPORT DEADLINES (1) remains as proposed.

(2) A local health officer must transmit by telephone or secure electronic means to the department the information required by ARM 37.114.205(1) and (2) for each suspected or confirmed case of one of the following diseases, within the time limit noted for each:

- (a) through (a)(iii) remain as proposed.
- (iv) Influenza-associated hospitalization and mortality, ~~pediatric~~;
- (v) through (b)(xi) remain as proposed.
- (xii) ~~Denque~~ Dengue virus infections;
- (xiii) through (xlvii) remain as proposed.

(3) Each week during which a ~~suspected or~~ laboratory-confirmed case of influenza is reported to the local health officer, the officer must transmit by secure electronic means to the department on Friday of that week the total number of the cases of influenza reported.

(4) and (5) remain as proposed.

AUTH: 50-1-202, 50-17-103, 50-18-105, MCA

IMP: 50-1-202, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.313 CONFIRMATION OF DISEASE (1) Subject to the limitation in (2), if a local health officer receives information about a case of any of the following diseases, the officer must ensure that a specimen from the case is submitted to the department, when possible, which will be analyzed to confirm the existence or absence of the disease in question, or for use in surveillance:

- (a) through (d) remain as proposed.
- (e) Carbapenem-Resistant Enterobacteriaceae (CRE);
- (e) through (af) remain as proposed but are renumbered (f) through (ag).
- (2) through (4) remain as proposed.

AUTH: 50-1-202, 50-1-204, MCA

IMP: 50-1-202, 50-1-204, MCA

37.114.563 PERTUSSIS (1) remains as proposed.

(2) An individual identified by the local health officer as a ~~close contact~~ household contact or individual at high risk of severe illness or an individual who has close contact with a person at high risk of severe illness must be referred by the officer to a physician for chemoprophylaxis. Persons at high risk for severe illness

include infants under 12 months, pregnant women, or individuals with preexisting health conditions that may be exacerbated by a pertussis infection. Other individuals identified as close contacts may be referred for chemoprophylaxis depending on the circumstances of the case or cases.

(3) A person identified by the local health officer as a close contact must be monitored by the local health officer for respiratory symptoms for ~~20~~ 21 days after the person's last contact with the case.

(4) and (5) remain as proposed.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on April 19, 2013. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ Shannon L. McDonald
Shannon L. McDonald
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State April 1, 2013.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.6.111, 44.6.112, 44.6.113) PROPOSED AMENDMENT
pertaining to fees charged by the)
Business Services Division and)
output relating to the Farm Bill Master)
List)

TO: All Concerned Persons

1. On May 2, 2013, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on April 25, 2013, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.6.111 LIENS APPEARING ON THE FARM BILL MASTER LIST AND FEES FOR OBTAINING THE FARM BILL MASTER LIST (1) remains the same.

(2) The secretary of state shall charge and collect for the following fees for providing the farm bill master list:

- (a) ~~on CD-ROM~~ online access, per month \$ 20.00
- (b) on paper, per farm ~~product category~~ month ~~5.00~~ 20.00
- (for any report over 50 pages, the buyer will pay the vendor directly for any third party printing and shipping costs).
- (c) ~~on microfiche, per farm product category~~ _____ 5.00

AUTH: 30-9A-526, MCA
IMP: 30-9A-525, MCA

REASON: The Secretary of State is in the process of implementing a more robust online database that will allow the Farm Bill Master List to be made available online through a web-based application. The Farm Bill Master List will no longer be provided on CD-ROM or microfiche, thereby necessitating the amendment to the rule. The new online application will allow multiple persons within an organization to

view the information from different desktops at the same time and the online lien information will be updated daily. This change addresses concerns expressed over the years from Montana buyers of farm products. The access fee to the Farm Bill Master List remains the same as the fee for the CD-ROM, but buyers will receive a much better product. The access fee for a paper copy of the Farm Bill Master List is modified so that it is the same as the access fee for the online version.

44.6.112 FARM BILL MASTER LIST (1) remains the same.

(2) The farm bill master list is published:

~~(a) on the fifteenth~~ 15th day of every month; ~~or,~~

~~(b) on the preceding business day if the fifteenth falls on a weekend or holiday.~~

(3) The farm bill master list is distributed to registered buyers no later than the ~~twentieth~~ 20th of each month.

AUTH: 30-9A-526, MCA

IMP: 30-9A-302, MCA

REASON: The amendments to the days of the month references in (2)(a) and (3) are simply style and format changes. Subsection (2)(b) is deleted in its entirety because it will no longer be applicable when the new web-based database for the Business Services Division is implemented.

44.6.113 DEFINITIONS AND REQUIREMENTS FOR ONLINE FILING

(1) The following definitions apply for filing Uniform Commercial Code liens and amendments online:

(a) "submitter" is a person or entity that files a Uniform Commercial Code lien document online;

(b) "compliance ~~officer~~ technician" is a person who works in the secretary of state's office who is qualified to certify that a lien document meets the requirements of ~~the law~~ state and federal laws;

~~(c) "registered user" is a person or entity who is registered with a private vendor to file liens using the on-line filing system available through internet technology.~~

(2) Fees and payment methods for online filing of Uniform Commercial Code liens are ~~published on-line by the private vendor~~ by credit and/or debit card.

(3) Liens documents filed through the use of internet technology are considered to be liens filed online.

(4) The following liens are acceptable for online filing:

(a) initial financing statements and associated amendments that meet the requirements of Title 30, chapter 9A, MCA;

(b) effective financing statements and associated amendments that meet the requirements of the federal Food Security Act of 1985.

(i) An effective financing statement lien and amendment may be filed electronically without the signature of the debtor and secured party.

(ii) If an original or reproduced paper document is filed, the lien must be ~~signed by the secured party and~~ authorized or authenticated by the debtor, and be filed by the secured party.

(5) The following liens are unacceptable for online filing:

~~(a) transmitting utility liens;~~

~~(b) (a) notice of child support liens;~~

~~(c) (b) notice of federal tax liens; and~~

~~(d) (c) Title 71, MCA, liens.~~

(6) Online filing is available ~~between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday~~ 24 hours a day, seven days a week except during predetermined system maintenance and then users will be notified online of maintenance schedule.

~~(7) On-line filing is not available on weekends or state holidays, or between 7:01 p.m. and 6:59 a.m. each working day.~~

~~(8) (7)~~ Submitters will be notified online if online filing is not available due to technology problems.

~~(9) (8)~~ The following requirements must be met in order to successfully complete an online lien filing:

(a) and (b) remain the same.

~~(10) (9)~~ A Uniform Commercial Code document that is successfully completed and submitted online will be considered filed upon receipt by the secretary of state's office. The online technology application will ~~insure~~ ensure the document is properly completed prior to acceptance. The submitter will be notified by an online message if required fields are not properly completed. A message confirming successful completion and acceptance will appear online when the filing is accepted.

~~(11) (10)~~ Submitters should print and retain their acknowledgement message as proof that the online filing was received by the secretary of state's office. The acknowledgement message will contain a unique filing number, filing date and time, filing type, debtor(s) information, secured party(ies) information, and filing language.

~~(12) (11)~~ The following online filings will be rejected:

(a) and (b) remain the same.

~~(13) (12)~~ The submitter will be notified by an online message if their document is rejected. If a filing is later determined to be improper under 30-9A-420, MCA, the secretary of state's office will notify the submitter of the rejection.

~~(14) (13)~~ The date and time a successfully submitted online filing is considered to be effective is the date and time the document was accepted online by the secretary of state's office.

AUTH: 30-9A-526, MCA
IMP: 30-9A-502, 71-3-125, MCA

REASON: The rule is amended to accommodate changes that will occur with the implementation of a new online web-based database. Language is added to allow the filing of amendments, specify the payment method of credit and/or debit cards, and expand the filing hours. Other minor amendments are to clarify that the filing officer is a "technician" rather than an "officer," to eliminate the definition for

"registered user," to substitute the words "authorized or authenticated" for "signed," delete "transmitting utility liens" as a lien that is unacceptable for online filing, insert "MCA" after Title 71 to conform to citing requirements for the Administrative Rules of Montana, and change "insure" to "ensure."

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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., May 10, 2013.

5. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

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

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 1st day of April, 2013.

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

In the matter of the adoption of)	
temporary emergency rules closing a	)	NOTICE OF ADOPTION OF
portion of the Clark Fork River and a	)	TEMPORARY EMERGENCY RULES
portion of Warm Springs Wildlife)	
Management Area due to Superfund)	
cleanup efforts)	

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of temporary emergency rules:

(a) Department of Environmental Quality and Department of Justice, Natural Resource Damage Program requested 1 3/4 miles of the Clark Fork River, ten acres of the Warm Springs Wildlife Management Area, and a road in the wildlife management area be closed to public occupation due to Superfund cleanup construction activities.

(b) The Superfund cleanup activities require heavy equipment with large loads in an area of recreational use.

(c) The closure is necessary so construction crews can safely operate and maneuver without potential collisions with recreationists on the river or on the land. The closure is also necessary so recreationists, including those with limited maneuverability, are not subject to potential collision with large equipment or loads being carried by heavy equipment.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following temporary emergency rules. The emergency rules will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rules will be sent to interested parties, and published as temporary emergency rules in Issue No. 7 of the 2013 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the commission no later than 5:00 p.m. on April 30, 2013, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The temporary emergency rules are effective March 29, 2013 when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rules provide as follows:

RULE I TEMPORARY EMERGENCY CLOSURE OF A PORTION OF THE CLARK FORK RIVER (1) A portion of the Clark Fork is located in Deer Lodge County.

(2) The Clark Fork River and its banks are closed to all public occupation and recreation including, but not limited to, fishing, floating, swimming, wading, and boating for 1 3/4 miles starting approximately 3/4 mile downstream of the Pond 2 outflow as signed.

(3) This rule is effective until repealed, or for 120 days, whichever comes first.

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

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

RULE II TEMPORARY EMERGENCY CLOSURE OF A PORTION OF WARM SPRINGS WILDLIFE MANAGEMENT AREA (1) A portion of Warm Springs Wildlife Management Area is located in Deer Lodge County.

(2) The road accessing the eastern portion of the wildlife management area is closed as gated and signed.

(3) The portion of land south of the road closure to the boundary of the wildlife management area is closed to all public occupation.

(4) This rule is effective until repealed, or for 120 days, whichever comes first.

AUTH: 2-4-303, 23-1-106, 87-1-303, MCA

IMP: 2-4-303, 23-1-106, 87-1-303, MCA

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

6. These rules will expire as soon as the commission adopts an annual recreational use rule to address the safety concerns, or in 120 days, whichever comes first. Notice of repeal of these emergency rules will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Sharon Rose, Department of Fish, Wildlife and Parks, 3201 Spurgin Road, Missoula, MT 59804; fax 406-542-5529; e-mail shrose@mt.gov, and must be received no later than May 10, 2013.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal

Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Mike Volesky

Mike Volesky

Deputy Director

Department of Fish, Wildlife and Parks

Acting Secretary

Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter

Rule Reviewer

Certified to the Secretary of State March 29, 2013.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.30.1330, 17.30.1341, 17.30.1343,)
17.30.1361, and 17.30.1362 pertaining)
to concentrated animal feeding)
operations, general permits, additional)
conditions applicable to specific)
categories of MPDES permits,)
modification or revocation and)
reissuance of permits, minor modification)
of permits and adoption of New Rule I)
pertaining to technical standards for)
concentrated animal feeding operation)

NOTICE OF AMENDMENT AND
ADOPTION

(WATER QUALITY)

TO: All Concerned Persons

1. On December 20, 2012, the Board of Environmental Review published MAR Notice No. 17-342 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 2510, 2012 Montana Administrative Register, issue number 24.

2. The board has amended ARM 17.30.1330, 17.30.1341, 17.30.1343, 17.30.1361, and 17.30.1362 exactly as proposed and has adopted New Rule I (17.30.1334) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (17.30.1334) TECHNICAL STANDARDS FOR CONCENTRATED ANIMAL FEEDING OPERATION (1) through (2)(h) remain as proposed.

(3) Except as provided in (10), application rates for manure applied to each field must be determined based on the criteria given in (a) through (c).

(a) The CAFO shall complete a field-specific assessment to determine the appropriate basis (nitrogen- or phosphorus-based) for application of plant nutrients. ~~The field-specific assessment must be based on the phosphorus index assessment method described in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management, Agronomy Technical Note MT-77 (revision 3), January 2006. The nutrient application basis is determined as follows:~~ The field-specific assessment for CAFOs applying manure on fields that are located in a watershed that is listed as impaired for nutrients (total phosphorus or total nitrogen) must follow the method listed in (i). The field-specific assessment for CAFOs applying manure on fields that are not located in a watershed that is listed as impaired for nutrients (total phosphorus or total nitrogen) may follow the procedures in either (i) or (ii).

~~(i) nitrogen-based application if the site vulnerability rating is low or medium (total phosphorus index value is less than 22);~~ The field-specific assessment must

be based on the phosphorus index assessment method described in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management, Agronomy Technical Note MT-77 (revision 3), January 2006. The nutrient application basis is determined as follows:

(A) nitrogen-based application, if the site vulnerability rating is low (total phosphorus index value is less than 11);

(B) phosphorus-based, if the site vulnerability rating is medium (total phosphorus index value is between 11 and 21);

(C) phosphorus-based application up to crop removal, if the site vulnerability rating is high (total phosphorus index value is between 22 and 43); or

(D) no application, if the site vulnerability rating is rated as very high (total phosphorus index value is greater than 43).

(ii) phosphorus-based application up to crop removal if the site vulnerability rating is high (total phosphorus index value is between 22 and 43); or The field-specific assessment must be based on a representative soil sample, as described in (5), using the Olsen soil test method. The nutrient application basis is determined as follows:

(A) nitrogen-based application, if the Olsen phosphorus soil test is less than 25 mg/L;

(B) phosphorus-based application, if the Olsen phosphorus soil test is greater than 25.1 mg/L and less than 100 mg/L;

(C) phosphorus-based up to crop removal, if the Olsen phosphorus soil test is greater than 100.1 mg/L and less than 150.0 mg/L;

(D) no application, if the Olsen phosphorus soil test is greater than 150 mg/L.

(iii) no application of phosphorus if:

(A) the site vulnerability rating is rated as very high (total phosphorus index value is greater than 43); or

(B) the results of a representative soil phosphorus test for the field results in a value of 150 mg/L phosphorus or more using the Olsen soil test.

(b) The CAFO shall complete a nutrient need analysis for each crop to determine the acceptable amounts of nitrogen and phosphorus to be applied to the field based on the appropriate basis (nitrogen- or phosphorus-based application) as determined in (a). The nutrient needs must be determined based on Montana State University Extension Service Publication 161, Fertilizer Guidelines for Montana Crops or other relevant sources. For crops not listed in Bulletin 161, the department may approve a fertilizer application rate provided by the local county extension service or other qualified source. The CAFO must identify the source of the nutrient needs analysis in the nutrient management plan.

(c) The CAFO shall complete a nutrient budget based on the nutrients needs of the crop as determined in (b) that accounts for all sources of nutrients available to the crop. Other sources that must be addressed where applicable include those in (i) through (vi) below.

(i) The nitrogen needs determined in (b) must be reduced based on nitrogen fixation credits if a legume crop was grown in the field in the previous year based on the nitrogen fixation rates given in Schedule I. Nitrogen reduction for annual legume crops is ten pounds per acre and for perennial legumes is 50 pounds per acre, unless appropriate justification is given showing a lower rate is appropriate, but not

less than 35 pounds per acre for all perennial legumes except black medic and annual sweet clover, for which the rate is not less than 15 pounds per acre, and lentils and chick peas, for which the rate is not less than 30 pounds per acre.

Schedule I. Nitrogen Fixation Estimates for Dryland Conditions

<u>Crop</u>	<u>Nitrogen Fixation (pounds per acre)</u>
Alfalfa (after harvest)	40-80
Alfalfa (green manure)	80-90
Spring Pea	40-100
Winter Pea	70-100
Lentil	30-100
Chickpea	30-90
Fababean	50-125
Lupin	50-55
Hairy Vetch	90-100
Sweetclover (annual)	15-20
Sweetclover (biennial)	80-150
Red Clover	50-125
Black Medic	15-25

(ii) The nitrogen needs determined in (b) must be reduced based on nitrogen residuals from past manure applications based on nitrogen mineralization rates given in Schedule H I.

Schedule II remains as proposed, but is renumbered Schedule I.

(iii) remains as proposed.

(iv) Nitrogen availability may be adjusted to reflect the method of application given in Schedule III II. For phosphorus-based application, the nitrogen availability is 1.0.

Schedule III remains as proposed, but is renumbered Schedule II.

(v) through (6) remain as proposed.

(7) Manure must be applied to fields at times and under conditions that will hold the nutrients in place for crop growth and protect surface and ground water using best management practices described in the nutrient management plan. The intended target spreading dates must be included in the NMP. Manure must not be land-applied under the following conditions:

(a) and (b) remain as proposed.

(c) to frozen or snow-covered ground (winter application), except for fields meeting the following criteria:

(i) the application area must be at least 300 feet from lakes, streams, intermittent streams, irrigation canals and ditches, open intake structures, property lines, and road right-of-ways;

(ii) permanent vegetative cover or standing stubble with crop residue greater than 50 percent; and

(iii) land slope of the field must not exceed the following criteria:

(A) six percent for application of solid manure (total solids content greater than 15 percent); or

(B) three percent for application of slurry or liquid waste (total solids content of 15 percent or less).

(8) If winter application is proposed, the CAFO must identify fields suitable for winter application in the nutrient management plan and application rates for manure must not exceed those identified in the nutrient budget as determined in (3)(c).

(8) through (11)(f) remain as proposed, but are renumbered (9) through (12)(f).

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: Under Department Circular DEQ-9, a CAFO was able to substitute a soil test for phosphorus to determine the nutrient budget in the nutrient management plan (NMP). New Rule I does not allow for a soil test and instead requires that all CAFOs complete a phosphorus risk assessment.

RESPONSE: Department Circular DEQ-9 provided two options for determination of the field-specific application rate. The soil test method based the application rate on the results of a single soil analysis for phosphorus. The Phosphorus Index (PI) is based on a combination of factors, including: soil erosion potential, application method, runoff potential, commercial fertilizers, soil test, and distance to surface water. The PI provides a better estimate for assessing the potential for phosphorus and nitrogen to enter surface water and was therefore selected as the preferred method in New Rule I. The basis for eliminating the simple soil test was to provide a greater level of protection to surface water. The Montana 2012 Final Integrated Water Quality Report (Montana Department of Environmental Quality, March 2012) identifies 228 waterbodies as impaired for phosphorus (total) and 202 waterbodies as impaired for nitrogen (total). Phosphorus and nitrogen, along with sedimentation/siltation are major sources of impairment of Montana surface waters.

In order to provide greater flexibility to CAFOs while protecting impaired waterbodies, the board will amend New Rule I to allow the soil test analysis for CAFOs with fields which are not located in a watershed that is listed on the most recent 303(d) list as impaired for nitrogen or phosphorus (nutrients).

COMMENT 2: I currently prepare NMPs for 13 different CAFOs that are actively being implemented and I question whether or not it is the intent of the State to require that they be reevaluated.

RESPONSE: Nutrient Management Plans must be updated every five years in accordance with MPDES permit application requirements and 40 CFR 122.23 and 122.42(e).

COMMENT 3: NRCS believes that winter application should be allowed until we have some assurance that economically disadvantaged producers can afford or acquire six months of waste storage capacity. To prevent the offsite delivery of nutrients and further protect water quality, these winter applications would need to be applied at agronomic rates as currently required and exclude the following special protection areas:

- (1) land within in 300 feet of lakes, streams, intermittent streams, irrigation canals and ditches, open intake structures, and road right-of-ways;
- (2) land slopes greater than six percent for solid manure;
- (3) land slopes greater than three percent for semi-liquid (slurry) or liquid manure;
- (4) land that is not in permanent vegetation or standing stubble and has crop residual of less than 50 percent.

RESPONSE: New Rule I has been amended to allow for winter application of manure on land that meets certain criteria. The CAFO must identify any fields that may be used for winter application in the nutrient management plan. However, winter application is not allowed as a substitute for adequate storage.

COMMENT 4: The NRCS requests that the board delete Schedule I - Nitrogen Fixation Rates for Dryland Conditions, in (3)(c)(i) of New Rule I, and that Schedule I be replaced with the following language: (1) for annual crops such as chickpea, lentil, and peas, the nitrogen benefits average about ten pounds per year; and (2) for perennial legumes such as alfalfa or sweet clover, nitrogen needs must be reduced by 35 to 50 pounds per acre. The basis for this request is that nitrogen fixation rates vary widely and are influenced by climate, annual variation, management practices, and other factors.

RESPONSE: The board agrees that nitrogen fixation rates can vary depending on the factors identified in the comment. Schedule I has been replaced with a nitrogen reduction credit of ten pounds per acre for annual legumes and 35 to 50 pounds for perennial legumes, except for black medic, annual sweet clover, chick peas, and lentils. The board has retained the minimum rates contained in Schedule I because raising those minimum rates would be beyond the scope of this rulemaking.

COMMENT 5: New Rule I(3)(b) requires that the CAFO complete a nutrient needs analysis for each crop based on Montana State University (MSU) Extension Service Publication 161. The problem with using this document is: (1) this bulletin is not up to date; (2) there are other justifiable sources (more recent research information, neighboring agricultural universities, and private sector research); and (3) the local Extension agent may not be the best source for alternative information though they are a conduit back to the university. MSU Extension recommends that the board allow other relevant research-based publications in addition to Publication 161 and that, for crops not listed in Publication 161, the rule allow other qualified consultants such as Certified Crop Advisors (CCAs) or certified professional agronomists.

These two simple changes would prevent unnecessary and detrimental restrictions on the most current and best science available for developing NMPS.

These simple changes should not open up the flood gates for invalid methods of NMP development. The reality is that there are more consultants working in this area than local extension agents. Most of them are CCAs as are many agents.

RESPONSE: The board has amended New Rule I(3)(b) to allow other relevant sources of information to be used in determining the nutrient needs of the crop and, for crops not listed in Publication 161, the rule is amended to allow the nutrient needs to be based on qualified sources of information. The rule is also amended to require the CAFO to submit the source of this information in the nutrient management plan. In accordance with 40 CFR 122.23, the department is required to review this information and, after providing for public comment, determine that this information meets the intent of 40 CFR 122.42(e) and 40 CFR 412.

The board is not limiting the qualifications of the individuals providing this information to CCAs or certified professional agronomists as suggested by the comment. Professional licensing and certification in Montana is within the jurisdiction of the Department of Labor and Industry, Business Standards Division and is outside of the scope of this rulemaking.

4. No other comments or testimony were received.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

By: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.

Chairman

Certified to the Secretary of State, April 1, 2013.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 18.8.519 pertaining to wreckers)
and tow vehicle requirements)

TO: All Concerned Persons

1. On February 14, 2013, the Department of Transportation published MAR Notice No. 18-139 pertaining to the proposed amendment of the above-stated rule at page 204 of the 2013 Montana Administrative Register, Issue Number 3.

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

18.8.519 WRECKERS AND/OR TOW VEHICLE REQUIREMENTS

(1) remains as proposed.

~~(2) If the licensed gross weight or actual gross weight of the towed power unit does not exceed 26,000 pounds, and separating the~~ a towed power unit combination would create a safety risk to the traveling public or to property on the roadway, a wrecker or tow vehicle may tow the vehicles or vehicle combination from the emergency scene or place of disablement on a public roadway to the operator's place of business or yard or suitable secure facility if it is within 100 miles of the emergency scene.

~~(3) If the licensed gross weight or actual gross weight of the towed power unit exceeds 26,000 pounds, and separating the combination would create a safety risk to the traveling public, the disabled vehicle combination may be removed intact from the emergency scene or place of disablement, but must be separated at the first place where the disabled vehicle combination can be safely reduced to a single unit without creating a safety risk to the traveling public.~~

(4) through (7) remain as proposed but are renumbered (3) through (6).

~~(8)~~(7) MCS may recommend a 30-day or longer suspension from the towing program for violation of this rule. MCS will report violations of this rule to the Department of Justice for appropriate action against the wrecker or tow vehicle operator.

AUTH: 61-10-155, MCA

IMP: 61-10-121, 61-10-122, 61-10-124, 61-10-125, 61-10-141, MCA

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

COMMENT #1: One comment was received questioning the wording of (2) on creating a safety risk to the traveling public. The comment asked whether the language included the safety risk of the act of separating the units. The comment

further asked whether the owner or the disabled or wrecked unit was considered part of the traveling public or not if he was disabled and not traveling or moving. The comment suggested adding the words "or property" to the subsection to protect both the people that are traveling and the safety and property of the person broken down or involved in an accident.

RESPONSE #1: The department agrees with the comment to the extent that the rule must protect both the traveling public and any property along the roadway which may be at risk due to the actions of a tow vehicle. The rule will be amended as shown above to include the phrase "or to property on the roadway" to clarify no safety risk to either travelers or property on the roadway should be created by a tow vehicle.

COMMENT # 2: One comment was received stating (3) on towing power units which exceed 26,000 pounds gross weight created the same questions on safety risks. The comment stated the existing wording requiring a combination over 26,000 pounds gross weight to be towed to the first place where the disabled combination can be safely reduced to a single unit should not be used. The comment stated the units should be moved to the operator's place of business or a secured yard, since this part of the rule has been a source of contention between enforcing agencies and the towing industry for years. The comment stated (3) should mirror (2) in allowing towing of a disabled unit to a secure yard or operator's place of business within 100 miles of the emergency site or place of disablement.

RESPONSE #2: The department agrees with the comment and will delete (3) in its entirety, so that the wording in (2) on towing within 100 miles to the operator's business or yard or suitable secure facility will apply to all towing situations. The rule will no longer distinguish between units under and over 26,000 pounds gross weight.

COMMENT #3: One comment was received regarding (7) on tow vehicle operations during restricted travel hours or severe weather. The comment stated that it is important to get disabled units off the highways even during weekends, holidays, and at night. The comment stated the tow industry needs flexibility to get the casualties to the operators' yards and off the highways. The comment suggested (7) should add wording such as "may tow to a secure yard or operator's place of business."

RESPONSE #3: The department disagrees with the comment and noted (7) does allow for tow vehicle operation during restricted hours of daylight, weekends, and holidays. The rule only imposes a destination condition during inclement weather, when severe or restricted driving conditions exist, when it is often not safe for the traveling public for tow units to try to reach the operator's yard. The towing activity may cause an even greater hazard on the roads during severe or restricted driving conditions. The proposed language requiring tow vehicles to travel only to "the first safe place the vehicles may be safely parked until the restricted or severe driving conditions have been removed" will remain for safety reasons.

COMMENT #4: One comment was received stating (8) on MCS suspension recommendations for rule violation is badly worded. The comment stated the subsection should be deleted. The comment stated the Montana Tow Truck Act provides for suspensions when there is total willful disregard to the due process of law and gross unethical business practices, but any penalties are only imposed by the Tow Truck Complaint Resolution Committee, after a full hearing with the Attorney General's office (Department of Justice). The comment stated (8) is the wrong method to promote professional towing practices and relationships as authorized emergency responders. The comment further stated that the towing industry is regulated by both Montana Highway Patrol (Department of Justice) and Motor Carrier Services (Department of Transportation), thus common ground must be found so all parties work toward the same goals of safety for the public and removal of hazards from the roadways in the safest and quickest way possible.

RESPONSE #4: The department considered the comment and acknowledges the Department of Justice is the appropriate agency for imposition of sanctions against tow vehicle operators. The department will therefore amend the rule as shown above to state that MCS will report violations to the Department of Justice for appropriate action.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State April 1, 2013.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
 ARM 32.2.405, 32.3.435, 32.3.1303,)
 32.3.1308, 32.18.101, 32.18.109,)
 32.22.101, 32.22.102, 32.22.103,)
 32.22.104, 32.22.105 and 32.22.106)
 pertaining to testing within the DSA,)
 Department of Livestock)
 miscellaneous fees, official)
 trichomoniasis testing and)
 certification requirements, hot iron)
 brands required, freeze branding,)
 aerial hunting, identification, and)
 identification methodology)

TO: All Concerned Persons

1. On December 20, 2012, the Department of Livestock published MAR Notice No. 32-12-229 regarding the proposed amendment of the above-stated rules at page 2543 of the 2012 Montana Administrative Register, issue number 24.

2. The department has amended ARM 32.2.405, 32.3.1303, 32.3.1308, 32.18.101, 32.18.109, 32.22.101, 32.22.102, 32.22.103, 32.22.104, 32.22.105, and 32.22.106 exactly as proposed.

3. The department has amended ARM 32.3.435 as proposed, but with the following change from the original proposal, new matter underlined, deleted matter interlined:

32.3.435 TESTING WITHIN THE DSA (1) The following official brucellosis test requirements apply to all test eligible animals and cattle or domestic bison of any age if intended to be used for breeding purposes that are or have been located within the DSA boundaries of any calendar year:

(a) through (2) remain as proposed.

~~(a) A change of ownership test is required on all cattle and domestic bison regardless of age intended to be used for breeding.~~

(3) remains as proposed.

REASON: The original proposed changes in 32.3.435(2)(a) were not clear as to intent of testing requirements. Language was added to (1) and deleted in (2)(a) to clarify the rule.

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

Comment #1: The language in [32.3.1303] (3)(a) and (3)(b) are in conflict with each other.

Response #1: This language is consistent with the existing official order and addresses two different groups of animals. Subsection (3)(a) addresses animal by reproductive status. All sheep and goats that are sexually intact are required to be identified when they are involved in one of the following: importation, entry into interstate marketing channels, change of ownership, or exhibition. Subsection (3)(b) addresses animal by age, i.e., animals that remain in the population past 18 months of age but do not meet one of the other identification requirements. Specifically, this would address animals over 18 months of age that may have been spayed/castrated, but remain in the population.

Comment #2: The language in [32.3.1303] (4)(a) does not allow the movement/sale of ewe lambs into feeder/slaughter channels without identification. This creates a burden on the producer to identify these animals before they are moved.

Response #2: This language is consistent with the existing official order and the exemption does allow for the movement/sale of ewe lambs into recognized slaughter channels without official identification. This would include the sale of animals for feeding purposes or the sale of animals direct to slaughter. What is not included in this exemption is the movement of animals for grazing purposes.

Comment #3: [We] have thought about how this new test requirement would work for us. Most producers in our area ship directly off the cow and from their summer pastures. This means we usually have one day set aside to handle the calves for pre-shipment vaccinations and weighing. To add yet one more procedure to the day will take up more time. It is already a very long day (til dark) and we as well as others do not have the facilities at the summer pasture (mountains) to accommodate holding over animals that did not get tested the first day. Working the calves two days in a row would be too stressful with the results being sick calves, not to mention weight loss which is what our paycheck is based on. Basically the addition of this new test requirement becomes a difficult if not impossible event from a management standpoint.

Response #3: DSA regulations promote receiving state confidence in the disease-free status of Montana cattle. This proposed change to the administrative rule will only affect sexually intact DSA calves (less than 12 months of age) that are sold for breeding purposes. This regulation has been in place in Wyoming's DSA for some time and is an addition to Montana's program recommended by the recent USDA review team. The majority of sexually intact calves currently sold out of the DSA are sold for feeding purposes and therefore will not be affected.

Comment #4: When you think of the number of cattle located within the DSA, the rule change to "regardless of age" puts a large increase in the amount of state-required testing.

Response #4: The majority of heifers are sold for feeding purposes and not specifically for breeding.

A variety of comments were received that do not apply to the rule change but address DSA and brucellosis issues. Comments and responses #5 through #13 respond to these questions.

Comment #5: Once again the livestock industry is bearing the brunt of the accountability for the disease of brucellosis found in the GYA.

Response #5: This comment does not apply to the rule change; however, please see response to #6 and #9.

Comment #6: Accountability needs to occur within the DOL for livestock protection/disease control and with FWP for mitigation efforts with elk.

Response #6: The department is the lead agency in protecting the livestock industry of the entire state, from disease as well as preventing the movement of potentially infected livestock out of the DSA. Movement of infected livestock out of the DSA would likely cost the livestock industry millions of dollars.

Comment #7: The review of the management plan by the committee in September conveniently did not mention wild bison.

Response #7: The USDA APHIS review team looked specifically at the DSA programs in the three GYA states. The IBMP addresses the Yellowstone National Park bison management. One of the partners in the IBMP is USDA APHIS.

Comment #8: Will FWP accept the recommendations within the committee report (page 18, second bullet under recommendations) that indicates the use of late hunts to mitigate comingling?

Response #8: The USDA APHIS review team as well as the Fish, Wildlife and Parks (FWP) elk brucellosis working group recommended the potential use of late hunts. The FWP commission adopted the elk brucellosis working group recommendations and is aware of the recommendations of the review team. For that reason, late hunts could potentially be used in local situations if local citizens working groups feel that it is the best course of action.

Comment #9: While the DSA regulations fit certain agency prescriptions, has anyone given thought to how producers are affected in their operational management?

Response #9: This comment does not apply to the rule change; it is directed toward all DSA regulations. The DSA and its regulations on approximately 5% of the cattle and domestic bison industry in Montana are in place to protect the entire industry of the state from the introduction of brucellosis. The DSA regulations prevent the movement of potentially infected livestock to other states and allow for rapid discovery and traceability of the disease. The DSA also prevents additional and varying regulations that would be imposed by other states on DSA cattle as well as low risk cattle from other portions of Montana and potentially the entire state. Such regulations would be significantly more costly.

Comment #10: How many producers knew this committee was meeting in September? Was the meeting advertised so the public could attend? How many producers know there is a 21-page report on your web site?

Response #10: The USDA APHIS review committee included one State of Montana employee and reviewed the overall effectiveness of the DSA in the state. Public meetings were not held. However, two of the review team members did meet with DOL staff, market staff, and producers that were present at that time as a sort of "spot check" for DSA enforcement at markets. These two members of the review team did the same at markets in Wyoming and Idaho. The DOL does post general information on the web site and encourages interested parties to utilize this resource to stay informed of current issues. Information regarding other programs, regulations, diseases, and other information are available there as well.

Comment #11: How many more recommendations from the review committee does the DOL plan to implement?

Response #11: Any recommendations that we have not already implemented (those recommendations that say for Montana to "continue") the DOL plans to implement.

Comment #12: Is the DOL ready to go to the legislature and make sure those funds are secured and appropriated? What happens if there is no funding? The DOL has significantly increased the financial burden with this rule change. There will be no support for producer-paid testing.

Response #12: The DOL has and will continue to work diligently to secure funding for testing and surveillance within the DSA. Funding for DSA testing is in the governor's budget (House Bill 2) as well as the use of per capita fees. Additional funding for the program has come from the USDA through cooperative agreement dollars.

Comment #13: We continue to believe that with transparent, informative, and respectful dialogue, there could be many more times where the DOL and livestock producers are partnered instead of adversarial.

Response #13: The DOL is committed to continued transparency and dialogue with livestock producers within the DSA as well as statewide.

Based upon the comments received, there are no revisions to the proposed rule amendments.

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay
Christian Mackay
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ George H. Harris
George H. Harris
Rule Reviewer

Certified to the Secretary of State April 1, 2013.

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.

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 a soft back, bound 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 the accumulative table 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. |

ACCUMULATIVE TABLE

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 December 31, 2012. This table includes those rules adopted during the period January 1, 2013, through March 31, 2013, 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 December 31, 2012, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2012/2013 Montana Administrative Register.

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