

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 8.2.503 pertaining to the) PROPOSED AMENDMENT
administration of the Quality Schools)
Grant Program)

TO: All Concerned Persons

1. On December 15, 2015, at 1:00 p.m., the Department of Commerce will hold a public hearing in Room 228 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 the Department of Commerce no later than 5:00 p.m., December 10, 2015, to advise us of the nature of the accommodation that you need. Please contact Amy Peck, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail DOCQS@mt.gov.

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

8.2.503 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE QUALITY SCHOOLS GRANT PROGRAM – PROJECT GRANTS (1) The Department of Commerce adopts and incorporates by reference the ~~2017~~ 2019 Biennium Quality Schools Grant Program Application Guidelines and Administration Manual as rules for the Quality Schools Grant Program – Project Grants program (~~March 2014 Draft~~).

(2) The rules incorporated by reference in (1) relate to the scope and procedures for the application, award, administration, monitoring, and close-out of school facility and technology project grants to public school districts.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Quality Schools Grant Program web site at <http://commerce.mt.gov/QualitySchools>.

AUTH: 90-6-819, MCA
IMP: 90-6-819, MCA

REASON: It is reasonably necessary to amend these rules to initiate the department's administration of the project grant components of the Quality Schools Grant Program, 90-6-801, et seq., MCA. Public school districts must have these

guidelines available before the entities may apply to the department for financial assistance under the 2019 Biennium Quality Schools program. The guidelines describe the department requirements with which public school districts must comply in order to apply for, receive, and administer Quality School project grant funds.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail DOCQS@mt.gov, and must be received no later than 5:00 p.m., December 23, 2015.

5. Ethan Stapp, Quality Schools Program Manager, Department of Commerce, has been designated to preside over and conduct this hearing.

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

7. 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.

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

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

/s/ DOUGLAS MITCHELL
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State November 16, 2015.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
17.74.101 and 17.74.102 pertaining to)	
occupational noise and occupational air	)	(NOISE AND AIR CONTAMINANTS)
contaminants)	
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 28, 2015, the Department of Environmental Quality proposes to repeal the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., December 7, 2015, 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 rules proposed for repeal are as follows:

17.74.101 OCCUPATIONAL NOISE (History: 50-70-106, 50-70-113, MCA; IMP, 50-70-103(8), 50-70-113, MCA), located at page 17-8225, Administrative Rules of Montana.

17.74.102 OCCUPATIONAL AIR CONTAMINANTS (History: 50-70-106, 50-70-113, MCA; IMP, 50-70-103, 50-70-106, 50-70-113, MCA), located at page 17-8227, Administrative Rules of Montana.

REASON: These rules were adopted under the authority in and to implement the provisions of the Occupational Health Act of Montana, which was codified in Title 50, chapter 70, part 1, MCA. This Act has been repealed and these rules are, therefore, no longer statutorily authorized.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to 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, no later than December 24, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must

make written request for a hearing and submit this request along with any written comments they have to 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, no later than December 24, 2015.

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 hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be one based on no persons being affected by the repeal.

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 that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; 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 the office at (406) 444-4386, e-mailed to Elois Johnson at 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.

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

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

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

BY: /s/ Tom Livers
TOM LIVERS, Director

Certified to the Secretary of State, November 16, 2015.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 20.25.101, 20.25.202,) PROPOSED AMENDMENT
20.25.401, 20.25.505, 20.25.601,)
20.25.801, 20.25.901, 20.25.902,)
20.25.903, and 20.25.904 pertaining)
to parole and executive clemency)

TO: All Concerned Persons

1. On December 15, 2015, at 2:00 p.m., the Board of Pardons and Parole will hold a public hearing at the Board of Pardons and Parole office located at 1002 Hollenbeck Road, Deer Lodge, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board of Pardons and Parole 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, please advise the Board of Pardons and Parole of the nature of the accommodation needed no later than 5:00 p.m. on December 4, 2015. Contact Timothy Allred, Board of Pardons and Parole, 1002 Hollenbeck Road, Deer Lodge, MT 59722; telephone (406) 846-1404; fax (406) 846-3512; or e-mail tallred@mt.gov.

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

20.25.101 ORGANIZATION OF THE BOARD (1) The board is a quasi-judicial body and is administratively attached to the Department of Corrections. The board consists of seven members who are appointed by the Governor. ~~The board shall administer executive clemency and~~ The board shall make recommendations on executive clemency and administer parole processes and procedures, and ensure the effective application of and improvements to the clemency and release system as well as of the laws upon which they are based.

(2) through (5) remain the same.

(6) The board chair or designee, in consultation with the board members:

(a) assigns hearing panels to conduct parole hearings, revocation hearings, rescission hearings, administrative parole reviews, reconsideration of previous parole decisions, and to make ~~final decisions and~~ recommendations in matters of executive clemency;

(b) and (c) remain the same.

(7) through (9) remain the same.

AUTH: 46-23-218, MCA

IMP: 2-15-121, 2-15-124, 2-15-2302, 46-23-104, MCA

REASON: The board proposes amending ARM 20.25.101 based on the enactment of House Bill (HB) 43, L. 2015. Under HB 43, the Office of the Governor has the authority to make final decisions on executive clemency applications after receiving recommendations from the board.

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

(8) "Hearing panel" means two or three board members appointed to conduct parole hearings, revocation hearings, rescission hearings, administrative parole reviews, and to make ~~final decisions and~~ recommendations in matters of executive clemency.

(9) through (20) remain the same.

AUTH: 46-23-218, MCA

IMP: 46-23-103, 46-23-104, 46-23-218, MCA

REASON: The board proposes amending ARM 20.25.202 based on the enactment of House Bill (HB) 43, L. 2015. Under HB 43, the Office of the Governor has the authority to make final decisions on executive clemency applications after receiving recommendations from the board.

20.25.401 HEARING PROCEDURE (1) An eligible offender may apply and come before a hearing panel or an out-of-state releasing authority for nonmedical parole consideration within two months of time fixed by law as calculated by the prison records department. During the parole hearing the hearing panel will consider all pertinent information regarding each eligible offender, including the factors set forth in ARM 20.25.505(2).:

~~(a) the circumstances of the offender's current offense and any other offenses the offender has committed;~~

~~(b) the offender's social history and criminal record;~~

~~(c) the offender's prison record including disciplinary conduct, work history, treatment programs, classification and placement, and adjustment to prison; and~~

~~(d) reports of any physical, psychological, and mental health evaluations done on the offender.~~

(2) The presiding hearing panel member shall conduct hearings informally and shall have discretion to allow or not allow any proposed testimony. Board staff shall make a video and audio record of all hearings.

(3) remains the same.

(4) Criminal justice authorities or any other interested ~~interested~~ persons may submit written comments about an offender's possible parole to board staff at any time before the hearing. ~~The hearing panel will give interested persons' comments due consideration at the offender's hearing.~~

(5) A victim may present a statement regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to concerning:

(a) the manner in which the crime was committed ~~effects of the crime on the victim;~~

(b) and (c) remain the same.

(6) At the presiding hearing panel member's discretion, the victim's statement and testimony will be kept confidential if the presiding member finds the victim's privacy interest outweighs the public's right to know. A recording of the hearing will not personally identify the victim without the victim's written consent.

~~(7) The hearing panel shall consider the victim's statement along with the other information presented in determining whether to grant parole.~~

(8) through (14) remain the same, but are renumbered (7) through (13).

AUTH: 46-23-218, MCA

IMP: 46-23-202, 46-23-203, 46-23-204, MCA

REASON: The board proposes amending ARM 20.25.401(1) by incorporating by reference the criteria for nonmedical parole contained in ARM 20.25.505. The board proposes removing the criteria set forth in ARM 20.25.401(1)(a) through (d) and incorporating the criteria into the proposed amendment of ARM 20.25.505(2).

The board proposes amending ARM 20.25.401(2) and (6) by adding language to clarify that an audio and video record of all parole hearings must be made, but such recordings may not personally identify a victim without his or her written consent. The proposed amendment is based on the enactment of House Bill (HB) 28, L. 2015, which requires the board to video and audio record parole hearings, but not personally identify a victim without his or her written consent.

The board proposes amending ARM 20.25.401(4) and (5) to reflect the enactment of HB 135, L. 2015. The proposed amendments incorporate the language of HB 135 pertaining to victim statements and statements of criminal justice authorities. The board's consideration of statements by a victim, criminal justice agency, or other interested person is addressed in the proposed amendment to ARM 20.25.505(2)(p).

20.25.505 CRITERIA FOR RELEASE GRANT DECISIONS ON NONMEDICAL PAROLE (1) remains the same.

(2) In making its determination regarding release, the hearing panel shall consider all available and pertinent information regarding the offender, including ~~may consider each of the following factors:~~

(a) the circumstances of the offense; ~~the offender's maturity, stability, sense of responsibility and development of traits and behaviors which increase the likelihood the offender will conform his/her behaviors to the requirements of law;~~

(b) the offender's social history and prior criminal record, including the nature and circumstances of the offense, date of offense, and frequency of previous offenses; ~~the adequacy of the offender's release plan;~~

(c) the offender's conduct, employment, and attitude in prison, including particularly whether the offender has taken advantage of opportunities for treatment and whether the offender is clear of major disciplinary violations prior to the hearing; ~~the offender's ability and readiness to assume obligations and undertake responsibilities;~~

(d) the reports of any physical, psychological, and mental evaluations that have been made; ~~the offender's education and training;~~

~~(e) the offender's maturity, stability, sense of responsibility, and development of traits and behaviors that increase the likelihood the offender will conform the offender's behavior to the requirements of law; the offender's family status and whether the offender has relatives who display an interest or whether the offender has other close and constructive associations in the community;~~

~~(f) the adequacy of the offender's release plan; the offender's employment history, occupational skills, and the stability of the offender's past employment;~~

~~(g) the offender's ability and readiness to assume obligations and undertake responsibilities; the type of residence, neighborhood or community in which the offender plans to live;~~

~~(h) the offender's education and training; the offender's past use of chemicals (including alcohol), and past habitual and/or abusive use of such chemicals;~~

~~(i) the offender's family status and whether the offender has relatives who display an interest or whether the offender has other close and constructive associations in the community; the offender's mental and/or physical makeup;~~

~~(j) the offender's employment history and occupational skills and the stability of the offender's past employment; the offender's prior criminal record, including the nature and circumstances of the offense, date of offense and frequency of previous offenses;~~

~~(k) the type of residence, neighborhood, or community in which the offender plans to live; the offender's attitude toward law and authority;~~

~~(l) the offender's past use of chemicals, including alcohol, and past habitual or abusive use of chemicals; the offender's conduct in the institution, including particularly whether the offender has taken advantage of opportunities for treatment, and whether the offender is clear of major disciplinary violations prior to the hearing;~~

~~(m) the offender's mental and physical makeup; the offender's behavior and attitude during any previous experience of supervision and the recency of such experience;~~

~~(n) the offender's attitude toward law and authority; any statement of the victim or victims of the offense;~~

~~(o) the offender's behavior and attitude during any previous experience of supervision and the recency of the supervision;~~

~~(p) written or oral statements from criminal justice authorities or any other interested person or the interested person's legal representative, including written or oral statements from a victim;~~

~~(o) and (p) remain the same, but are renumbered (q) and (r).~~

AUTH: 46-23-218, MCA

IMP: 46-23-201, 46-23-202, MCA

REASON: The board proposes amending ARM 20.25.505 to reflect the enactment of House Bill (HB) 135, L. 2015. The proposed amendments consist of reorganizing and restructuring the rule to conform with the statutory language of HB 135. The board does not believe the proposed amendment substantively changes the criteria considered when evaluating parole applications.

20.25.601 RESCISSION HEARING (1) through (2) remain the same.

(3) The presiding hearing panel member will conduct the rescission hearing informally and will make a an audio and video record of it. The offender has the right to be present at the hearing, but may waive that right and admit the allegations are true.

(4) and (5) remain the same.

AUTH: 46-23-218, MCA

IMP: 46-23-218, MCA

REASON: The board proposes amending ARM 20.25.601 based on the enactment of House Bill (HB) 28, L. 2015, which requires the board to video and audio record parole rescission hearings.

20.25.801 ON-SITE HEARING AND REVOCATION OF PAROLE

(1) through (14) remain the same.

(15) The presiding hearing panel member will conduct the revocation hearing and will make an audio and video record of the hearing. The decision of the board in a revocation hearing is by a preponderance of the evidence. The board may consider:

(a) through (c) remain the same.

(16) remains the same.

AUTH: 46-23-218, MCA

IMP: 46-23-215, 46-23-1024, 46-23-1025, MCA

REASON: The board proposes amending ARM 20.25.801 based on the enactment of House Bill (HB) 28, L. 2015, which requires the board to video and audio record parole revocation hearings.

20.25.901 APPLICATIONS FOR CLEMENCY (1) through (3) remain the same.

(4) Clemency applications that have been submitted and denied prior to October 1, 2015, may be resubmitted to the board for additional consideration, subject to this section (4) and the applicable provisions of the administrative rules.

(a) If a resubmitted application is substantively similar to a previously denied application, then the board shall proceed as follows:

(i) Board staff will first assess whether an application is substantively similar to a previous application. The staff shall submit a report to the hearing panel with its assessment of whether the application is substantively similar to a previous application.

(ii) If an application is substantively similar to a previous application, the board's hearing panel may assess the application without further investigation, evaluation, or a hearing. The panel may rely on the existing record.

(iii) The panel may, in its discretion, direct that further investigation or evaluation be conducted, or that an additional hearing be held.

(b) If a resubmitted application includes substantive new material or evidence, the panel may request that an investigation be conducted with regard to

the new material or evidence. The panel, in its discretion, may also request a psychological evaluation or schedule a hearing that may be limited to the new material or evidence.

(c) Upon completion of its assessment, the board shall within ten working days forward to the Governor's office its recommendation to grant or deny clemency, together with all relevant documents. The board shall also forward to the Governor's office a proposed executive order if its recommendation is to grant clemency. If the board's recommendation is to deny clemency, it shall forward to the Governor's office and the applicant a board-recommended disposition summarizing the reasons for denial.

(d) If the board recommends denial of a resubmitted application without a hearing, it will give notice to the applicant and will post the recommended denial on the board's web site within 21 calendar days of the board's recommendation.

(e) The board shall conduct a hearing if, after review by the Governor's office, the Governor directs that a hearing be conducted. The board shall direct that further investigation into specific aspects of an application be conducted if requested by the Governor.

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

AUTH: 46-23-218, MCA

IMP: 42-23-301, MCA

REASON: The board proposes amending ARM 25.20.901 based on the enactment of House Bill (43), L. 2015. Under HB 43, the Office of the Governor has the authority to make final decisions on executive clemency applications after receiving recommendations from the board. The board therefore proposes amending the rule to implement a process under which it reviews executive clemency applications and makes recommendations to the Office of the Governor.

20.25.902 INVESTIGATIONS FOR CLEMENCY AND ORDER FOR HEARING (1) In cases in which the death penalty has not been imposed, the board staff will conduct a preliminary review of the application for clemency and submit a report to a hearing panel for its consideration.

(a) remains the same.

(b) If a hearing panel decides to reject the application, it shall within ten working days transmit the application to the Governor's office for review by the Governor. The board shall conduct a hearing, if after review by the Governor's office, the Governor directs that a hearing be conducted. The board shall direct that further investigation into specific aspects of an application be conducted if requested by the Governor.

(b) remains the same, but is renumbered (c).

~~(c)(d)~~ After receipt of the investigation report, the board staff's recommendation, and any other reports the panel has required, a hearing panel will consider the application and decide whether to hold a hearing deny on the application ~~or hold a hearing concerning the application.~~

(d) remains the same, but is renumbered (e).

~~(e)~~(f) If the panel recommends denial of the application without a hearing, ~~it will give notice to the applicant and will post the denial on the board's web site within 21 calendar days of the board's decision.~~ it shall:

(i) within ten working days transmit the application to the Governor's office for review by the Governor; and

(ii) forward a board-recommended disposition summarizing the reasons for denial and post the recommended denial on the board's web site within 21 calendar days of the board's decision.

(g) If ordered by the Governor, the board shall conduct a hearing. The board shall direct that further investigation into specific aspects of an application be conducted if requested by the Governor.

(2) If the board receives an application for clemency for an inmate for whom the death penalty has been imposed, the board will set a date for a hearing on the application. Board staff will give notice of the hearing date, as prescribed by law, and as described in (1)~~(d)~~(e).

AUTH: 46-23-218, MCA

IMP: 46-23-301, 46-23-302, MCA

REASON: The board proposes amending ARM 25 20.902 based on the enactment of House Bill (43), L. 2015. Under HB 43, the Office of the Governor has the authority to make final decisions on executive clemency applications after receiving recommendations from the board. The board therefore proposes amending the rule to implement a process under which it reviews executive clemency applications and makes recommendations to the Office of the Governor.

20.25.903 HEARING PROCEDURE FOR CLEMENCY (1) remains the same.

(2) The hearing panel that conducts the hearing will hear all relevant facts and information of the petitioner, petitioner's counsel and witnesses, as well as any opponents to the petition, and will make a an audio and video recording of the hearing including proof of publication of the order for hearing.

(3) through (5) remain the same.

AUTH: 46-23-218, MCA

IMP: 46-23-306, MCA

REASON: The board proposes amending ARM 20.25.903 based on the enactment of House Bill (HB) 28, L. 2015, which requires the board to video and audio record hearings on executive clemency.

20.25.904 DECISION RECOMMENDATION CONCERNING CLEMENCY

(1) Upon conclusion of the hearing the hearing panel will take the entire case under advisement or may issue an immediate ~~decision~~ recommendation. If the panel takes the case under advisement, it must make a ~~decision~~ recommendation in writing within 30 days to grant or deny clemency.

(a) In cases in which the death penalty has not been imposed, if ~~the hearing panel makes a recommendation that the governor grant clemency, it will immediately forward all relevant documents and a proposed executive order to the governor for the governor's final determination. If the panel does not recommend a grant of clemency, it will not forward the application to the governor.~~ the hearing panel will make a recommendation to grant or deny clemency.

(b) The hearing panel shall within ten working days forward to the Governor's office its recommendation to grant or deny clemency, together with all relevant documents for the Governor's final determination. If the hearing panel makes a recommendation that the Governor grant clemency, it shall also forward a proposed executive order to the Governor's office. If the panel does not recommend clemency, it will forward a board-recommended disposition summarizing the reasons for denial.

(b) remains the same, but is renumbered (c).

~~(2) The board staff will notify the applicant of the panel's decision in writing within 30 days of the hearing.~~

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

AUTH: 46-23-218, MCA

IMP: 46-23-301, 46-23-307, MCA

REASON: The board proposes amending ARM 25.20.904 based on the enactment of House Bill (43), L. 2015. Under HB 43, the Office of the Governor has the authority to make final decisions on executive clemency applications after receiving recommendations from the board. The board therefore proposes amending the rule to implement a process under which it reviews executive clemency applications and makes recommendations to the Office of the Governor.

The board also proposes amending the title to conform with the content of the rule.

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: Timothy Allred, Montana Board of Pardons and Parole, 1002 Hollenbeck Road, Deer Lodge, MT, 59722; telephone (406) 846-1404; fax (406) 846-3512; or e-mail tallred@mt.gov, and must be received no later than 5:00 p.m., on December 23, 2015.

5. Timothy Allred, Board of Pardons and Parole, Executive Director, has been designated to preside over and conduct this hearing.

6. The Board of Pardons and Parole 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference

is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 846-3512, or may be made by completing a request form at any rules hearing held by the Board of Pardons and Parole.

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, apply and have been fulfilled. The primary sponsors of HB 28, HB 43, and HB 135 were contacted by letter on July 22, 2015.

9. The Board of Pardons and Parole has determined that under 2-4-111, MCA, the proposed rule amendments will not significantly and directly impact small businesses.

/s/ ROBERT LISHMAN
Robert Lishman
Staff Attorney, DOC
Rule Reviewer

/s/ MARK STAPLES
Mark Staples
Chairperson
Board of Pardons and Parole

Certified to the Secretary of State November 16, 2015.

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

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULES I through IX, related to the) PROPOSED ADOPTION
reopening of medical benefits)
automatically closed in certain)
workers' compensation claims)

TO: All Concerned Persons

1. On December 18, 2015, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the basement auditorium of the Sanders Building (DPHHS building), 111 North Sanders Street, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on December 14, 2015, to advise us of the nature of the accommodation that you need. Please contact the Department of Labor and Industry, Attn: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail mlytle@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: This general statement of reasonable necessity applies to NEW RULES I through IX. There is reasonable necessity to adopt rules to implement the claims closure and medical reopening provisions of Chapter 167, L. of 2011 (House Bill 334) at this time, in order to have the reopening request review procedure in place prior to the beginning of the reopening request period which starts for certain claims on April 2, 2016. April 2, 2016, is 90 days prior to the 60-month anniversary of the effective date of the automatic medical benefit termination provision found in 39-71-704(1)(f), MCA. Section 39-71-717(5), MCA, specifies that 90 days prior to the medical benefits termination date is the earliest a petition to reopen medical benefits may be filed.

There is no analogous petition for medical review of terminated medical benefits that previously existed within the Montana workers' compensation system, and therefore the reopening process had to be developed "from scratch," based on the statutory requirements set out in 39-71-717, MCA. Rulemaking is reasonably necessary to describe the contents of, and procedure by which, a petition for reopening of terminated medical benefits is filed as those details are not provided by statute. There is reasonable necessity to define various terms used in the process, the various steps in the process, and describe what the various parties must do during the process.

The department's business process is designed to gather records and information from the parties, send the materials to the reviewing physicians, receive the written reviews from the physicians, and have the department's medical director

prepare a final report and recommendation within the allotted 60 days. In cases involving use of the medical review panel, two of the panel members will be physicians who are not employees of the department. The department has determined that prior to sending the medical records and other information to the panel members, the materials need to be placed in a logical, orderly manner, to minimize wasted time spent by the reviewing physician organizing those materials. The department therefore concludes it is reasonably necessary to require that insurers and workers have 14 days to send the department medical records and other information, in order to prepare the required medical director's report and recommendations within the 60 days allowed by law.

The department has also considered and rejected allowing a "good cause" extension of the 14-day limit for delivering medical records or additional information. Because the statutory 60-day period in which to issue a final report and recommendation does not provide for a "good cause" extension of time for completion, the department believes it is not feasible to provide a methodology for a party to request an extension. The department has concluded that the 60-day requirement is too short a period in which to accommodate extension requests and still timely issue the report and recommendation.

There is reasonable necessity to provide a "fast track" procedure for reopening when the worker and the insurer agree to a reopening, which will save time, expense, and effort for the worker, the insurer, and the department, while still complying with the requirement to issue the medical director's report and make recommendations regarding the petition for reopening.

Finally, it is reasonably necessary to adopt rules at this time to address the required periodic review of claims where medical benefits are recommended to be reopened for longer than two years. The periodic review process is integrated with the proposed rules, so that parties have a better understanding and expectations regarding how recommendations for more than two years of medical benefits will affect the claim and the parties' rights and obligations. Not addressing the periodic review process at this time would likely lead to uncertainty for the parties, and increase the probability of disputes and litigation.

The department, prior to formally proposing NEW RULES I through IX, provided a draft of the proposed rule text to various stakeholders, and publicly discussed the proposed rules at the 2015 Governor's Conference on Workers' Compensation. The stakeholders included worker's advocates, insurers, adjusters, attorneys, the labor-management advisory council, medical providers, legislators, and representatives of the Economic Affairs Interim Committee. The department considered the questions, concerns, and objectives informally provided by the various stakeholders before finalizing the proposed new rules for the formal notice and comment period required for administrative rulemaking. In addition, the department provided the primary bill sponsor with a copy of the draft proposed rules, and solicited comments from him concerning the draft. The bill sponsor's comments have been taken into consideration in the proposed new rules.

The proposed rules and the department-provided forms are designed for ease of use by workers and insurers, although the department recognizes that workers might enlist the assistance of legal counsel to decide whether or not to submit a petition for reopening. The department intends, as noted in NEW RULE I, to provide

more detailed instructions to help guide workers and insurers through the petition process. The instructions are not part of the rules, but will provide guidance to address frequently asked questions and elaborate on the types of documents that might be submitted in support of, or in response to, a petition for reopening. The instructions will provide up-to-date submission information, such as the mailing, physical, and electronic addresses to which materials may be delivered to the department.

The department believes these new rules strike a reasonable balance between providing only the minimal necessary information, and assuming the parties read and understand the relevant statutes, versus giving a detailed explanation of every term and concept already expressed in statute, thus ensuring that anyone unfamiliar with the Workers' Compensation Act will fully understand the process without referring to statute. The department believes that in only a relatively small portion of all workers' compensation claims will a worker need to consider requesting a reopening of medical benefits that are terminated by operation of law.

The department has drafted NEW RULES I through IX to ensure that the department has the option to use the services of a vendor to manage and store the medical records and other information sent to the department during the petition process. A vendor may also be used to provide a ready source of Montana-licensed physicians and medical specialists to review petitions in a timely manner so the department can comply with the statutory 60 days to issue a report and recommendations. The department is using the request for proposal (RFP) process to solicit and evaluate potential vendors. While the RFP process is separate from formal rulemaking, the department has considered as part of the rule-drafting process whether the entire petition handling process could and should be done entirely by department staff, whether to out-source the entire process to a vendor, or by using a combination of in-house staff and vendor support. The department has concluded that to provide timely and accountable procedures, the department should be the direct point of contact for workers and insurers. Through the RFP process, the department will evaluate the effectiveness and relative cost of obtaining certain "behind the scenes" services from one or more vendors. The development of the business process of handling the petition and performing the medical review therefore has influenced the workflow described in the proposed new rules.

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

NEW RULE I INTRODUCTION - APPLICABILITY - VOLUNTARY

PAYMENTS (1) [This subchapter] addresses the reopening of medical benefits terminated by operation of law for certain claims that occurred on or after July 1, 2011.

(2) [This subchapter] does not apply to claims to which any of the following circumstances apply:

- (a) arising before July 1, 2011;
- (b) in which the medical benefits have expressly been settled by means of a department or Workers' Compensation Court approved settlement or judgment;
- (c) in which the insurer did not fully accept liability for the underlying accident or occupational disease; or

- (d) arising on or after July 1, 2011, where the injury results in:
 - (i) permanent total disability; or
 - (ii) the fitting of a prosthesis which may need to be repaired or replaced.
- (3) The department will apply the provisions of [this subchapter] to claims accepted by the uninsured employers' fund.
- (4) Informational instructions regarding the process for a party to petition to reopen medical benefits terminated by operation of law are available from the Department of Labor and Industry, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011, and online at the department's web site. These instructions provide supplemental information about the reopening process and an explanation of how to submit a petition for reopening to the department.
- (5) Nothing in [this subchapter] prohibits an insurer from making voluntary payments for medical benefits that have terminated by operation of law. An insurer that makes a voluntary payment for a medical benefit that has been terminated by operation of law must advise the worker in writing that the payment for a medical benefit is made on a voluntary basis and does not create a legal obligation for the insurer to make payment for any other medical benefits.

AUTH: 39-71-203, MCA

IMP: 39-71-105, 39-71-107, 39-71-704, 39-71-717, MCA

NEW RULE II DEFINITIONS Terms defined in 39-71-116, MCA, are used in [this subchapter] as they are defined by statute. As used in [this subchapter] the following definitions apply unless the context clearly indicates otherwise:

- (1) "Accepted" means the petition has been evaluated by the department and was found to be eligible to be considered for medical review.
- (2) "Additional information" means information other than a medical record, supplied by a worker or an insurer, and tendered as being relevant to the reopening of medical benefits.
- (3) "Approved" means that after the medical review has been performed, medical benefits are reopened, as specified in the medical director's report.
- (4) "Denied" means that after the medical review has been performed, medical benefits are not reopened.
- (5) "Department" means the Department of Labor and Industry.
- (6) "Dismissed" means the petition has been evaluated by the department and was found to be ineligible to be considered for medical review.
- (7) "Filed" means the status of a petition once it has been accepted by the department for medical review.
- (8) "Joint petition" means a petition for reopening that has been signed by both the worker and the insurer, with agreed-to terms concerning the reopening of medical benefits.
- (9) "Medical records" means documents related to the medical condition of the worker, and includes but is not limited to, notes, reports, and letters prepared by health care providers. The term does not include medical billing materials.
- (10) "Medical review panel" means the department's medical director and two additional physicians selected from a pool of available physicians, who can review a petition for the reopening of medical benefits, as provided for in 39-71-717, MCA.

(11) "Periodic review" means the every-two-years consideration by the medical review panel or the medical director as to whether the recommendations previously made should be continued or changed.

(12) "Petition" means the department-provided form upon which a party requests that medical benefits which have been terminated by the operation of 39-71-704, MCA, be reopened.

(13) "Physician" means a health care provider who takes part in a medical review panel under [this subchapter]. A physician must be licensed in Montana in one or more of the following categories:

- (a) medical doctor;
- (b) osteopath;
- (c) dentist;
- (d) chiropractor;
- (e) physician assistant; or
- (f) advanced practice registered nurse.

(14) "Received " means a petition which has been delivered to the department, but has not yet been accepted and filed by the department.

(15) "Reopened" means medical benefits which had terminated by operation of law, and which are now to be furnished by the insurer as recommended by the medical report.

(16) "Report" means the written recommendations of the medical director or medical review panel concerning whether or not medical benefits should be reopened, and if reopened, to what extent those benefits should be furnished.

(17) "Returned" means the petition has been evaluated by the department and has been found to be incomplete.

(18) "Submission," as used in 39-71-717(8), MCA, means the same as being filed with the department.

(19) "Submit," as used in 39-71-717(6), MCA, means to deliver medical records or additional information to the department.

(20) "Work" means supplying labor or services for remuneration, although not necessarily in employment by another.

(21) "Worker" means the individual who suffered the workplace injury or occupational disease upon which basis a claim for benefits was made to the insurer.

(22) "Year" means 12 calendar months.

AUTH: 39-71-203, MCA

IMP: 39-71-116, 39-71-717, MCA

NEW RULE III TIMELINES AND EXPLANATION OF STATUS

CLASSIFICATIONS OF A PETITION (1) The time in which a petition can be delivered to the department and considered filed is the period 90 days prior to the termination of medical benefits through the ten-year anniversary of the date of the injury.

(2) A petition which has been delivered to the department undergoes a preliminary evaluation to determine which of following three initial status conditions is appropriate:

- (a) the petition is accepted if it is eligible for medical review;

(b) the petition is dismissed if it is ineligible for medical review because:
(i) the petition concerns a claim that is not subject to the medical benefits reopening process; or

(ii) the petition concerns a claim for which a previous petition has been accepted; or

(c) the petition is returned if it is eligible for medical review, but the petition form is incomplete.

(3) Upon a petition being accepted, it is considered filed with the department. A petition that is dismissed or returned is considered not to have been filed with the department.

(4) The 60-day period for medical review to occur and the medical director to issue a report begins on the date the petition is considered filed.

(5) Once filed, the parties have 14 days to submit medical records and additional information to be considered during the medical review. Once the medical review is completed and the report is issued by the medical director, the petition will have one of the two following status conditions:

(a) the petition is approved, with a recommendation in the report as to the nature and extent of the medical benefits that should be provided by the insurer; or

(b) the petition is denied, with a recommendation in the report that no further medical benefits should be provided by the insurer.

(6) There is a rebuttable presumption that the petition relates to a claim which the insurer acknowledges is compensable. An insurer may dispute that presumption in writing by delivering to the department and the petitioner notice of the dispute regarding compensability within 14 days of the department's acceptance of the petition.

(a) Upon receiving the insurer's notice disputing compensability of the claim, the acceptance of the petition is suspended until:

(i) the compensability dispute is resolved by agreement of the parties;

(ii) the compensability dispute is resolved by the final judgment of the courts;

or

(iii) the time in which to bring the compensability dispute to the workers' compensation court expires, without a party bringing that dispute to the workers' compensation court for adjudication.

(b) A petition that has had its acceptance status suspended is considered to be timely made for the purposes of the filing time limits provided by 39-71-717, MCA. While the acceptance status is suspended, the timelines for medical review and submission of documents do not begin to run. If the claim is deemed compensable, the department will notify the parties of the beginning of the 60-day review period, and that there are 14 days in which to submit medical records and additional information. If the claim is deemed not compensable, the status of the petition will be changed to dismissed.

(7) A petitioner disagreeing with the department's classification of a petition as either dismissed or returned may bring the dispute to the Workers' Compensation Court after following the mediation requirements provided by law.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

NEW RULE IV PETITION FOR REOPENING (1) A party wishing to reopen medical benefits terminated by operation of law must submit a petition for reopening to the department on the form provided by the department. Petition forms are available online at the department's web site, or upon request from the department's Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011.

(2) A petition cannot be accepted unless all of the fields in the form, other than those identified as being "optional," have been filled out.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

NEW RULE V SUBMISSION OF MEDICAL RECORDS AND ADDITIONAL INFORMATION - EFFECT OF FAILURE TO SUBMIT MEDICAL RECORDS OR

ADDITIONAL INFORMATION (1) Section 39-71-717(8), MCA, requires the department to issue the report of the medical director within 60 days of when the petition is considered filed. Due to this 60-day requirement, the parties have 14 days from the date the petition is considered filed in which to deliver to the department the medical records and any additional information the party wants considered in the medical review.

(a) The medical records and additional information must be delivered to the department in the manner and to an address as specified by the instructions.

(b) Any medical records or other information submitted by a party which have not previously been provided to the other party, must be sent to that other party at the same time the records or other information are delivered to the department.

(2) Medical records or additional information that are not timely delivered to the department will not be considered during the medical review. The medical review will be conducted considering only the materials that have been timely received by the department.

(3) When the petition is considered filed, the department will direct the insurer to deliver to the department the medical records contained in the insurer's claim file. In addition to sending the medical records in the claims file as required, the insurer is allowed to deliver to the department other medical records and any additional information the insurer wants considered in the medical review.

(4) Once the petition is considered filed, the worker is allowed to deliver to the department medical records and any additional information the worker wants considered in the medical review.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

NEW RULE VI JOINT PETITION FOR REOPENING (1) If the worker and the insurer agree on the nature and duration of the medical benefits to be reopened, the worker and the insurer may file a joint petition for reopening. A joint petition for reopening must be made on the department's joint petition form. Joint petition forms are available from the department in the manner described in [NEW RULE IV].

(2) All portions of the joint petition for reopening must be completed when it is delivered to the department, and the medical records and other information the parties believe are important to the issue of reopening must be provided at that time.

(3) Because the parties agree on the need for reopening medical benefits, the department's medical director will summarily review and approve the petition.

(4) In recognition that following the filing of the worker's petition, the parties may come to a voluntary agreement as to the nature and scope of medical benefits to be reopened, the department will treat the filing of a joint petition for reopening as a request for withdrawal of the worker's petition.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

NEW RULE VII REVIEW BY MEDICAL DIRECTOR - CONSENT OF BOTH PARTIES

(1) The worker and the insurer may consent to have a petition for reopening reviewed only by the department's medical director, and not by the medical review panel. An agreement to have the petition reviewed only by the department's medical director cannot be revoked. To be effective, the consent of each party to a review by only the medical director must be received by the department not later than the deadline for submission of medical records and additional information.

(2) The medical director may consult with nonphysician medical providers if the medical issues presented for review make it appropriate to do so.

(3) The medical director shall apply the standard of review, burden of proof, and other evaluation factors described in [NEW RULE VIII] that apply to review by the medical review panel.

(4) Following the medical director's review, the medical director shall issue a report and make recommendations with respect to the reopening of medical benefits.

(5) A party disagreeing with the medical director's report and recommendations may bring the dispute to the Workers' Compensation Court after following the mediation requirements provided by law.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

NEW RULE VIII REVIEW BY MEDICAL REVIEW PANEL - REPORT AND RECOMMENDATIONS

(1) Unless both the worker and the insurer agree to have a petition for reopening reviewed solely by the department's medical director, the petition will be reviewed by a three-member panel of physicians. The members of the medical review panel may consult with nonphysician medical providers if the medical issues presented for review make it appropriate to do so.

(2) The medical review panel may recommend that medical benefits be reopened only if:

(a) the worker's medical condition is a direct result of the compensable injury or occupational disease; and

(b) the worker needs additional medical benefits in order to:

- (i) continue to work; or
- (ii) return to work.

(3) The worker has the burden of proof to demonstrate the nature and duration of the medical benefits that should be reopened. Medical benefits will not be reopened unless the worker shows, based on a preponderance of evidence, that the criteria of (2) have been satisfied.

(4) Each member of the medical review panel shall prepare a report as to the panel member's evaluation of the medical records submitted for review and any additional information that has been submitted. The panel member must determine whether the evidence submitted demonstrates that further medical benefits meet the criteria of (2). The panel member's report must state the reason(s) and rationale for the recommendation.

(5) If a panel member concludes that additional medical benefits are necessary, the panel member shall identify the nature and extent of the medical benefits that should be provided. The analysis must include the reasons and rationale that explain:

(a) the nature or type of medical benefits recommended to be furnished, whether identified by specific procedure or by general description;

(b) the extent of the duration (whether by time or number of treatments) of the benefits expected to be needed; and

(c) whether and how the recommendations are consistent with the department's current utilization and treatment guidelines.

(6) Following the medical review panel members' individual reviews, the medical director shall issue a report and make recommendations on behalf of the panel with respect to the reopening of medical benefits that reflect the views of the majority of the panel members.

(7) A party disagreeing with the medical director's report and recommendations may bring the dispute to the Workers' Compensation Court after following the mediation requirements provided by law.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

NEW RULE IX PERIODIC REVIEW OF CERTAIN REOPENED MEDICAL

BENEFITS (1) The department's medical director shall biennially review claims where medical benefits have been reopened and the recommended duration of the reopening is more than two years, in order to determine whether the previous recommendations should be changed.

(2) The department shall request that the worker and the insurer deliver to the department medical records created since the prior medical review, as well as any additional information the party wants considered.

(a) The department's request shall specify a deadline by which those records and additional information must be received by the department.

(b) Any medical records or other information submitted by a party which have not previously been provided to the other party must be sent to that other party at the same time the records or other information are delivered to the department.

(3) The biennial review will be based on the materials previously submitted by the parties at the time the original petition for reopening was considered, and the records and information sent pursuant to (2). If a party does not timely send updated medical records or additional information, the medical director shall base the review on the materials available.

(4) The prior report and recommendation regarding medical benefits is presumed to be correct. A previous recommendation may be changed only if it is based on the updated medical records and information sent to the department.

(5) Following the medical director's review, if the medical director believes there is reason to change the prior recommendation, the medical director shall:

(a) in cases where the original review was made by a medical review panel, convene a new medical review panel to review the updated medical records and information; or

(b) in cases where the original review was made solely by the medical director, issue a report and make recommendations as provided by (6).

(6) Following completion of the periodic review, the medical director shall issue a report and make recommendations with respect to continuing the reopening of medical benefits.

(7) A party disagreeing with the medical director's report and recommendations may bring the dispute to the Workers' Compensation Court after following the mediation requirements provided by law.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

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: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail mlytle@mt.gov, and must be received no later than 5:00 p.m., on December 28, 2015.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been complied with. The primary bill sponsor was contacted by various e-mails starting on April 3, 2015, by letter on July 22, 2015, and again on September 16, 2015, by telephone.

8. Pursuant to 2-4-111, MCA, the department has determined that NEW RULES I through IX proposed in this notice do not have a significant and direct impact upon small businesses.

9. The department intends to adopt NEW RULES I through IX to be effective February 5, 2016. The department reserves the right to adopt some or all of the proposed new rules at a later date, or not at all.

10. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State November 16, 2015.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.301.301 incorporation by	)	PROPOSED AMENDMENT AND
reference of uniform plumbing code,	)	ADOPTION
24.301.714 fees, and adoption of)	
NEW RULE I incorporation by)	
reference of international wildland-)	
urban interface code (IWUIC))	

TO: All Concerned Persons

1. On December 17, 2015, at 1:00 p.m., a public hearing will be held in the Basement Conference Room, #B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption 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 Building Codes Bureau no later than 5:00 p.m., on December 11, 2015, to advise us of the nature of the accommodation that you need. Please contact David White, Building Codes Bureau, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2009; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; or dlibsdbcb@mt.gov (bureau's e-mail).

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

24.301.301 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) through (1)(s) remain the same.

(t) Subsection 704.3, is amended by deleting the first sentence and replacing it with, "There may not be a direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed." Exception: A warewashing (3-compartment) sink may have a direct connection only when used as a wash bin, rinse bin, and sanitizing bin and shall not be used for any other purpose. Establishments that use the sanitizing bin of their warewashing sink to wash produce or conduct other food preparation must maintain an indirect connection and are not eligible for this exception.

(u) through (y) remain the same.

(z) Subsection ~~897.4~~ 807.4, Domestic Dishwashing Machine, add exception as follows: "Exception #1: An approved type of indirect waste receptor may be used to receive discharge from domestic dishwashing machines."

(aa) through (2) remain the same.

AUTH: 50-60-203, 50-60-504, 50-60-508, MCA

IMP: 50-60-201, 50-60-203, 50-60-504, 50-60-508, MCA

REASON: Experience with indirect connections in warewashing sinks has demonstrated that the risk created by an indirect connection, e.g., the growth of mold and bacteria surrounding the drain, floor, and wall areas, outweighs the risk the indirect connection was intended to mitigate. This awareness has begun to create tension in the field between sanitarians and plumbers bound by the current plumbing code. This tension is likewise recognized by the 2013 U.S. Department of Health and Human Services, Food and Drug Administration Food Code 5-402.11(D) which provides an exception to the backflow protector design if allowed by law. The Montana Department of Public Health and Human Services has adopted the USDHHS food code by reference at ARM 37.110.260. The department is amending (1)(t) to create an exception for warewashing sinks and address this tension.

The department is amending (1)(z) correct a typographical error.

24.301.714 FEES (1) through (2) remain the same.

~~(3) If two or more boilers in the same room are inspected at the same time, the total inspection fee imposed for all boilers must be the fee for inspection of one boiler, and the inspection fee is the amount for the type of boiler with the highest fee.~~ The operating certificate fee is required for each boiler inspected.

(4) and (5) remain the same.

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, 50-74-219, MCA

REASON: The 2015 Montana Legislature enacted Chapter 46, Laws of 2015 (Senate Bill 71), an act revising the inspection fee for two or more boilers. The bill was signed by the Governor on February 18, 2015, and became effective July 1, 2015. The department is amending (3) to implement the legislation by addressing confusion regarding inspection fees for multiple boilers in a single room, and clarifying that each boiler requires its own inspection and associated inspection fees. Senate Bill 71 eliminated the same language from 50-74-219, MCA.

4. The proposed new rule provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF INTERNATIONAL WILDLAND-URBAN INTERFACE CODE (IWUIC) (1) The department adopts and incorporates by reference the International Wildland-Urban Interface Code, 2012 edition, published by the International Code Council, unless another edition is specifically stated, together with Appendix "B" (Vegetation Management Plan) and Appendix "C" (Fire Hazard Severity Form).

(2) Section 302 is deleted in its entirety and replaced with the following: "The governmental body or some other official state or local agency shall declare the wildland-urban interface areas within the jurisdiction. Such declaration or designation shall be based on findings of fact or some other process already completed such as mapping, boundary designations, or other informative processes such as wildland fire plans. Cities, counties, and towns that have adopted the

International Building Code or the International Residential Code in connection with their certification to enforce building codes will, if they elect to enforce the International Wildland-Urban Interface Code, record the official wildland-urban interface areas on maps available for inspection by the public.

(3) Chapter 4 is deleted in its entirety.

(4) Subsection 101.2, Scope, is modified by:

(a) Deleting the first sentence and replacing with: "The provisions of this code shall apply to the construction, alteration, movement, repair, addition, change-of-use or remodeling of any building, structure, or premises within the designated wildland-urban interface within the jurisdiction."

(5) Subsection 101.4, Retroactivity, is deleted in its entirety.

(6) Subsection 101.5, Additions or Alterations, delete the written exception.

(7) Subsection 101.6, Maintenance, is deleted in its entirety.

(8) Subsection 102.6, Existing Conditions, is modified by:

(a) Deleting "International Property Maintenance Code."

(9) Section 103, Enforcement Agency, is deleted in its entirety.

(10) Subsection 107.2, Permits Required, retain the first sentence and delete the remainder of the subsection.

(11) Subsection 109.4.4, Citations, is deleted in its entirety.

(12) Subsection 109.4.5, Unsafe Conditions, is deleted in its entirety.

(13) Subsection 109.4.5.1, Record, is deleted in its entirety.

(14) Subsection 109.4.5.2, Notice, is deleted in its entirety.

(15) Subsection 109.4.5.2.1, Method of Service, is deleted in its entirety.

(16) Subsection 109.4.5.3, Placarding, is deleted in its entirety.

(17) Subsection 109.4.5.3.1, Placard Removal, is deleted in its entirety.

(18) Subsection 109.4.5.4, Abatement, is deleted in its entirety.

(19) Subsection 109.4.5.5, Summary Abatement, is deleted in its entirety.

(20) Subsection 109.4.5.6, Evacuation, is deleted in its entirety.

(21) Replace Table 503.1 "Ignition-Resistant Construction" with the one

below:

DEFENSIBLE SPACE	Fire Hazard Severity		
	Moderate Hazard	High Hazard	Extreme Hazard
Nonconforming	IR2	IR1	IR1 N.C.
Conforming	IR3	IR2	IR1
1.5 X Conforming	Not Required	IR3	IR2

(22) Section 602, Automatic Sprinkler Systems, is deleted in its entirety.

(23) Section 604, Maintenance of Defensible Space, is deleted in its entirety.

(24) The IWUIC adopted by reference in (1) is a nationally recognized model code setting forth minimum standards and requirements for the safeguarding of life and property. A copy of the IWUIC may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the

International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or on their web site at www.ICCSafe.org.

AUTH: 50-60-202, 50-60-203, MCA

IMP: 50-60-201, 50-60-202, 50-60-203, MCA

REASON: The department determined it is reasonably necessary to adopt NEW RULE I to align with the adoption of a new publication of the International Wildland-Urban Interface Code (IWUIC). Adoption of the IWUIC as modified involves more than two years of stakeholder involvement, listening sessions, and deliberations with other jurisdictions, other agencies, and the Building Codes Advisory Council, to adopt a wildland-urban interface code suited to the particular needs of the state of Montana and its citizens.

Appendix "B" and "C" are adopted in (1) to provide specific information to assist citizens in vegetation management and in determining fire hazard severity.

Language in (2) modifies the IWUIC to identify agencies authorized to designate the wildland-urban interface.

Language in (3) deletes chapter 4 regarding subdivision review and infrastructure because these functions are the responsibility of local government and are outside the authority of the department.

The department is amending or deleting IWUIC language in (4) through (20) to be consistent with jurisdictional and procedural requirements of Title 50, chapter 60, MCA.

Section (21) modifies the IWUIC to exclude water supply access as a consideration for mitigation of defensible space, which in rural Montana is not a feasible requirement. Additionally, the table to be replaced references other sections of the IWUIC which are not being adopted.

In (22), the department is deleting the requirement of an automatic sprinkling system since the department has not adopted the requirement in any other residential building code. Further, the IWUIC focuses not on fires starting in a building and spreading outward, but on wildland fires spreading toward a building.

Language in (23) deletes Section 604 of the IWUIC as the department lacks authority over existing conditions and maintenance of defensible space. Though a condition to be complied with at the time of construction, once construction is complete, conditions and maintenance of the defensible space fall outside jurisdiction of the department.

The department is adding (24) to provide citizens and stakeholders with the purpose of this code and how to obtain copies.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to David White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or e-mail to dlibsdbcb@mt.gov and must be received no later than 5:00 p.m., December 24, 2015.

6. An electronic copy of this notice of public hearing is available at www.buildingcodes.mt.gov (department and bureau's web site). 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.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all department or bureau 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 David White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2050; e-mailed to dlibsdbcb@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Jim Keane, the primary bill sponsor, was contacted in person on September 10, 2015.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.301.301 and 24.301.714 and the adoption of NEW RULE I will not significantly and directly impact small businesses.

Documentation of the department's above-stated determinations is available upon request to David White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to dlibsdbcb@mt.gov.

10. Colleen White, 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 November 16, 2015

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.14.312 pertaining to fees) PROPOSED AMENDMENT
charged by the Records and)
Information Management Division)

TO: All Concerned Persons

1. On December 16, 2015, 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 rule.

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 December 3, 2015, 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) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.14.312 FEES FOR IMAGING SERVICES (1) The following fees shall be charged for imaging services:

- | | |
|--|---------------------------------|
| (a) each image | \$ 0.106 |
| (b) <u>(a)</u> indexing/document preparation, per hour | \$24.00 <u>25.00</u> |

AUTH: ~~2-6-201~~ 2-15-405, MCA
IMP: ~~2-6-202, 2-6-203, 2-6-206~~ 2-6-1101, MCA

REASON: Section (1)(a) is eliminated because this fee is covered in ARM 44.14.301(1)(a) as imaging and scanning are synonymous. New section (1)(a) is amended to adjust the fee charged for indexing/document preparation. This fee increase is the result of a year-long cost analysis performed by Records and Information Management that resulted in the adjustment of fees so that the fees charged are commensurate with the overall costs of the office and reasonably reflect the prevailing rates charged in the public and private sectors for similar services. The authority and implementation statutes were reviewed and updated.

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) 444-4249; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., December 24, 2015.

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.

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

10. The cumulative amount for all persons of the proposed fee change is approximately \$500 annually based on FY 2015 charges for Records and Information Management Division services and supplies. The number of persons affected is approximately 70 state and local government agencies that purchase supplies or perform services with the Records and Information Management Division.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 16th day of November, 2015.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 10.57.412, 10.57.425, and)
10.57.426, pertaining to educator)
licensure)

TO: All Concerned Persons

1. On September 24, 2015, the Board of Public Education published MAR Notice No. 10-57-274 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1402 of the 2015 Montana Administrative Register, Issue Number 18.

2. The board has amended ARM 10.57.412, 10.57.425, and 10.57.426 as proposed.

3. The following comment was received.

COMMENT 1: Dr. Kirk Miller, on behalf of School Administrators of Montana, supports the proposed rule amendments. The amendments provide appropriate flexibility to qualified applicants for licensure and clarification of educational requirements.

RESPONSE: The Board of Public Education thanks Dr. Miller for his comments.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Sharon Carroll
Sharon Carroll, Chair
Board of Public Education

Certified to the Secretary of State November 16, 2015.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.86.101 pertaining to)
updating the physician-related)
services provider manual)

TO: All Concerned Persons

1. On October 15, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-727 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1667 of the 2015 Montana Administrative Register, Issue Number 19.

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

3. No comments or testimony were received.

4. The department intends to apply this rule amendment retroactively to October 1, 2015. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

/s/ Francis X. Clinch
Francis X. Clinch
Rule Reviewer

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

Certified to the Secretary of State November 16, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 42.11.104, 42.11.105,)	
42.11.211, 42.11.213, 42.11.243,)	
42.11.245, 42.11.251, 42.11.402,)	
42.11.405, 42.11.406, 42.11.421,)	
42.11.422, 42.11.423, 42.11.424, and)	
42.11.425 pertaining to liquor prices,)	
vendor product representatives and)	
permits, samples, advertising,)	
unlawful acts, inventory policy)	
(powdered/crystalline liquor)	
products), product availability,)	
product listing, bailment, and state)	
liquor warehouse management)	

TO: All Concerned Persons

1. On August 27, 2015, the Department of Revenue published MAR Notice No. 42-2-934 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1254 of the 2015 Montana Administrative Register, Issue Number 16. The department subsequently published a notice of extension of comment period on the proposed amendment of the above-stated rules at page 1671 of the 2015 Montana Administrative Register, Issue Number 19.

2. On September 21, 2015, a public hearing was held to consider the proposed amendments. Leta McGann, of the Red Lodge Agency Liquor Store, Joel Silverman, Liquor Store Owners Association attorney, Christina Riffle, Liquor Store Owners Association representative, and Robin Blazer, of Willie's Distillery in Ennis, all appeared and testified at the hearing. No written comments were received.

3. The department has amended the above-stated rules as proposed.

4. As stated in the proposal notice, the department intends to apply the amendments to ARM 42.11.243, upon adoption, except for (1)(c) which will become effective on January 1, 2016, when the legislative changes to 16-4-311, MCA, become effective.

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

COMMENT 1: Ms. Blazer commented that the language in ARM 42.11.243(2) addressing the size of allowable primary packaging for samples seems redundant and can be removed.

RESPONSE 1: The department finds the language in this section necessary because it enables a vendor that does not produce a product in a size of 750 milliliters or less to provide samples in the smallest size in which it produces the product.

As written, if a vendor produces a product in a size of 750 milliliters or less, it is required to provide samples in these sizes. If the vendor does not produce a product in these sizes, it may provide samples in the smallest size it produces.

Therefore, the department is amending the rule as originally proposed.

COMMENT 2: Ms. McGann and Mr. Silverman commented that they are concerned with the number of regular list and maintained special order products based on the proposed definition of a "regular product" in ARM 42.11.105(9). They recommended that 75 percent of all products be classified as regular product with the remaining 25 percent being classified as special order.

As an alternative, Mr. Silverman proposed increasing the current 50 case requirement for determining regular listed items to 75 cases.

RESPONSE 2: The department proposed amending the definition of "regular product" in (9) to limit the number of products that can have this classification. Under the current definition, the number of regular products has increased with each biannual review.

The department determined that capping the total number of regular products at 1,300 is necessary due to facility constraints at the state liquor warehouse. Because the methodologies proposed by Ms. McGann and Mr. Silverman do not establish a maximum number of regular products, they cannot be utilized to address the facility issue presented.

Accordingly, the department is amending the rule as originally proposed.

COMMENT 3: Ms. McGann, Mr. Silverman, Ms. Riffle, and Ms. Blazer commented that they would like ARM 42.11.243(5) to be amended to allow agency liquor store agents and employees to sample liquor being promoted by registered vendor representatives at their agency liquor stores. The consumption of liquor on the premises of the agency liquor store would not extend to customers.

RESPONSE 3: Because the consumption of alcoholic beverages on the premises of an agency liquor store is prohibited by 16-2-107, MCA, the department cannot allow this activity by rule.

Therefore, the department is amending the rule as originally proposed.

COMMENT 4: Ms. McGann commented that she would like ARM 42.11.243(4)(b) to be amended to allow agency liquor store agents to receive samples, even if the agent has purchased the product in the most recent 12 months.

RESPONSE 4: The prohibition against samples being provided to a licensed all-beverage retailer or an agency liquor store agent that purchased the brand within the past 12 months is not a new provision in ARM 42.11.243. The prohibition,

previously located in (5), was relocated to (4)(b) as part of the proposed overall restructuring of the rule in the current proposal notice.

The prohibition stems from federal tied house restrictions, specifically Code of Federal Regulations Title 27, Section 6.91, which, in relevant part, states: "The act by an industry member of furnishing or giving a sample of distilled spirits, wine or malt beverages to a retailer who has not purchased the brand from that industry member within the last 12 months does not constitute a means to induce within the meaning of section 105(b)(3) of the Act."

This prohibition is reiterated in the department's administrative rule to help industry members understand that this tied house restriction applies to the distribution of samples.

The department is amending the rule as originally proposed.

COMMENT 5: Ms. Blazer asked why only three liters of a liquor product could be provided as samples to a retailer and requested the source of the proposed language in ARM 42.11.243(4)(c).

RESPONSE 5: The annual three liter sample cap on liquor and fortified wine was formally established in (6) of the rule prior to it being restructured as set forth in the proposal notice.

The prohibition stems from federal tied house restrictions in the Code of Federal Regulations Title 27, Section 6.91, which, in relevant part, states: "For each retail establishment the industry member may give not more than 3 gallons of any brand of malt beverage, not more than 3 liters of any brand of wine, and not more than 3 liters of distilled spirits."

Again, this prohibition is reiterated in the department's administrative rule to help industry members understand that this tied house restriction applies to the distribution of samples.

The department is amending the rule as originally proposed.

/s/ Laurie Logan

Laurie Logan
Rule Reviewer

/s/ Mike Kadas

Mike Kadas
Director of Revenue

Certified to the Secretary of State November 16, 2015

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	CORRECTED NOTICE OF
Rules I through IV, amendment of	)	ADOPTION, AMENDMENT, AND
ARM 44.15.101, and repeal of ARM	)	REPEAL
44.15.104, pertaining to notaries)	
public)	

TO: All Concerned Persons

1. On September 10, 2015, the Secretary of State published MAR Notice No. 44-2-198 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1358 of the 2015 Montana Administrative Register, Issue Number 17. On October 29, 2015, the Secretary of State published the notice of adoption, amendment, and repeal at page 1913 of the 2015 Montana Administrative Register, Issue Number 20.

2. The Secretary of State is publishing this corrected notice to indicate a word that should have been deleted with a new word inserted in the original rule notice. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

44.15.101 APPLICATION FOR A COMMISSION AS A NOTARY PUBLIC
 (1) remains as amended.
 (2) The application shall state indicate if the applicant:
 (a) through (4) remain as amended.

3. The replacement pages for this corrected notice will be submitted to the Secretary of State on December 31, 2015.

/s/ JORGE QUINTANA
 Jorge Quintana
 Rule Reviewer

/s/ LINDA MCCULLOCH
 Linda McCulloch
 Secretary of State

Dated this 16th day of November, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 1.2.419 pertaining to the)
scheduled dates for the 2016)
Montana Administrative Register)

TO: All Concerned Persons

1. On October 15, 2015, the Secretary of State published MAR Notice No. 44-2-208 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1744 of the 2015 Montana Administrative Register, Issue Number 19.
2. The Secretary of State has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 16th day of November, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 1.3.307 and 1.3.309 pertaining)
to rulemaking notice requirements)

TO: All Concerned Persons

1. On October 15, 2015, the Secretary of State published MAR Notice No. 44-2-209 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1748 of the 2015 Montana Administrative Register, Issue Number 19.

2. The Secretary of State has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 16th day of November, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.5.120 pertaining to)
trademark fees)

TO: All Concerned Persons

1. On October 15, 2015, the Secretary of State published MAR Notice No. 44-2-211 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1751 of the 2015 Montana Administrative Register, Issue Number 19.

2. The Secretary of State has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 16th day of November, 2015.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

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

Montana Administrative Register (MAR or Register) is 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 June 30, 2015. This table includes those rules adopted during the period July 1, 2015, through September 30, 2015, 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 June 30, 2015, this table, and the table of contents of this issue of the Register.

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 2015 Montana Administrative Register.

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

ADMINISTRATION, Department of, Title 2

I-VII	Credit Union Supervisory Committee - Credit Union Investment Rules - Board of Director Training, p. 1556
2.4.402	Single Audit Act Reporting Fees for Local Governments, p. 781, 1270
2.59.104	Semiannual Assessment for Banks, p. 351, 748
2.59.127	and other rules - Derivatives and Securities Financing Transactions as They Relate to Lending Limits and Credit Exposures, p. 390, 814
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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in October 2015 appear. Vacancies scheduled to appear from December 1, 2015 through February 29, 2016, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 1, 2015.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council (Administration)			
Mr. Ron Baldwin Helena	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Department of Administration Designee			
Mr. Kevin Box Whitehall	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Montana Emergency Medical Services Association			
Ms. Delila Bruno Helena	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Representative of the Department of Military Affairs			
Ms. Kim Burdick Fort Benton	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Representative of the Montana Association of Public Safety			
Captain Tom Butler Belgrade	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Department of Justice			
Mr. Geoff Feiss Helena	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Montana Telephone Company			
Mr. Terry Ferestad Billings	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Montana Telephone Company			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council (Administration) cont.			
Sheriff Chris Hoffman Hamilton	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Representative of the Montana Sheriffs and Peace Officers Association			
Mr. Bill Hunter Great Falls	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Public Safety Answering Point Manager serving a population over 30,000			
Ms. Lisa Kelly Kalispell	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Montana Telephone Company			
Chief Leonard Lundby Great Falls	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Representative of the Montana Fire Chiefs Association			
Commissioner Gary McDonald Wolf Point	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Representative of the Montana Association of Counties			
Chief Greg Megaard Bozeman	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Representative of the Montana Fire Chiefs Association			
Mr. Rick Musson Laurel	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Representative of the Montana Association of Chiefs of Police			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council (Administration) cont.			
Ms. Heather Roos Miles City	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Public Safety Answering Point Manager serving a population of less than 30,000			
Ms. Jennie Stapp Helena	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): State Librarian			
Mr. Chuck Winn Bozeman	Director	not listed	10/19/2015 9/1/2017
Qualifications (if required): Representative of the Montana League of Cities and Towns			
Board of Speech-Language Pathologists and Audiologists (Labor and Industry)			
Ms. Leah Jacobsen Great Falls	Governor	Hoagland	10/16/2015 12/31/2017
Qualifications (if required): audiologist			
Commission on Community Service (Governor)			
Mr. Holter Bailey Missoula	Governor	McKay	10/16/2015 7/1/2018
Qualifications (if required): youth representative			
State Compensation Insurance Fund Board of Directors (Governor)			
Mr. Matt Mohr Big Sky	Governor	Dykstra	10/16/2015 4/28/2019
Qualifications (if required): Private Enterprise Representative			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State-Tribal Economic Development Commission (Governor)			
Mr. Joe Fox Jr. Lame Deer	Governor	Robinson	10/16/2015 7/1/2017
Qualifications (if required): Northern Cheyenne Tribe Representative			
Tourism Advisory Council (Governor)			
Mr. Brian Sprenger Belgrade	Governor	Andrus	10/16/2015 7/1/2018
Qualifications (if required): Yellowstone Region Representative			

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2015 THROUGH FEBRUARY 29, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Chiropractors (Labor and Industry) Dr. Cathleen Fellows, Billings Qualifications (if required): Chiropractor</p>	Governor	1/1/2016
<p>Board of Occupational Therapy Practice (Labor and Industry) Ms. Sanna Beerman, Black Eagle Qualifications (if required): occupational therapist</p>	Governor	12/31/2015
<p>Board of Personnel Appeals (Labor and Industry) Ms. Anne L. MacIntyre, Helena Qualifications (if required): labor-management experience and an attorney</p>	Governor	1/1/2016
<p>Board of Public Education (Education) Mr. John W. Edwards, Billings Qualifications (if required): resident of District 2</p>	Governor	2/1/2016
<p>Children's System of Care Committee (Public Health and Human Services) Mr. Bob Peake, Helena Qualifications (if required): Appointee of Supreme Court representing youth courts</p>	Director	1/1/2016
<p>Ms. Lesa Evers, Helena Qualifications (if required): Other appropriate appointee</p>	Director	1/1/2016
<p>Ms. Cindy McKenzie, Helena Qualifications (if required): Appointee by Department of Corrections</p>	Director	1/1/2016
<p>Ms. Zoe Barnard, Helena Qualifications (if required): Mental Health Program</p>	Director	1/1/2016

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2015 THROUGH FEBRUARY 29, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Children's System of Care Committee (Public Health and Human Services) cont. Ms. Sarah Corbally, Helena Qualifications (if required): Child Protective Services	Director	1/1/2016
Ms. Rebecca de Camara, Helena Qualifications (if required): Developmental Disability Program	Director	1/1/2016
Ms. Jamie Palagi, Helena Qualifications (if required): Other appropriate appointee	Director	1/1/2016
Ms. Malayia Hill, Missoula Qualifications (if required): Other appropriate appointee	Director	1/1/2016
Ms. Kim Monroe, Missoula Qualifications (if required): Other appropriate appointee	Director	1/1/2016
Mr. Matt Kunz, Helena Qualifications (if required): Other appropriate appointee	Director	1/1/2016
Mr. Dennis Parman, Helena Qualifications (if required): Appointee of Superintendent of Public Instruction	Director	1/1/2016
Ms. Cil Robinson, Helena Qualifications (if required): Appointee of Youth Justice Council	Director	1/1/2016
Children's Trust Fund of Montana (Public Health and Human Services) Ms. Patty Butler, Lewistown Qualifications (if required): DPHHS Agency Representative	Governor	1/1/2016

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2015 THROUGH FEBRUARY 29, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Children's Trust Fund of Montana (Public Health and Human Services) cont. Ms. Mary Gallagher, no city listed Qualifications (if required): Agency Representative	Governor	1/1/2016
Ms. JoAnn Eder, Red Lodge Qualifications (if required): Public Representative	Governor	1/1/2016
Ms. Betty Hall-Munger, Helena Qualifications (if required): Public Representative	Governor	1/1/2016
Commission on Practice of the Supreme Court (Supreme Court) Ms. Jean Faure, Great Falls Qualifications (if required): none specified	elected	1/1/2016
Community Service Commission (Administration) Mr. Kevin Myhre, Lewistown Qualifications (if required): Local Government Representative	Governor	1/1/2016
Judicial Nomination Commission (Justice) Ms. Mona Charles, Kalispell Qualifications (if required): public representative	Governor	1/1/2016
Local Government Advisory Council (Revenue) Commissioner Carol Brooker, Plains Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Ms. Carole Lankford, Pablo Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2015 THROUGH FEBRUARY 29, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Local Government Advisory Council (Revenue) cont.		
Mr. Doug Kaercher, Havre Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Mr. Jerry Jimison, Glendive Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Ms. Kim Buchanan, Bozeman Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Mr. Greg Chilcott, Hamilton Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Ms. Paulette DeHart, Helena Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Ms. Donnie McVee, Laurel Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Ms. Betty Romo, Wolf Point Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Ms. Christina Volek, Billings Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Local Government Advisory Council (Revenue) cont.		
Mr. Jason Wiener, Missoula	Director	12/31/2015
Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe		
Mental Disabilities Board of Visitors (Governor)		
Mr. Graydon Davies Moll, Ronan	Governor	1/1/2016
Qualifications (if required): Experience with Treatment and Welfare of adults with developmental disabilities		
Mr. Dan Laughlin, Anaconda	Governor	1/1/2016
Qualifications (if required): Experience with Treatment and Welfare of children with serious emotional disturbances		
Montana Alfalfa Seed Committee (Agriculture)		
Mr. Tim Wetstein, Joliet	Governor	12/31/2015
Qualifications (if required): alfalfa seed grower		
Mr. Dallas Steiger, Hysham	Governor	12/21/2015
Qualifications (if required): alfalfa seed grower		
Montana Children's Trust Fund Board (Public Health and Human Services)		
Ms. Kristina Davis, Great Falls	Governor	1/1/2016
Qualifications (if required): General Public Representative		
Mrs. Catherine Molloy, Helena	Governor	1/1/2016
Qualifications (if required): General Public Representative		
Small Business Health Insurance Pool Board of Directors (Insure Montana) (State Auditor)		
Ms. Tara Veazey, Helena	Governor	1/1/2016
Qualifications (if required): non-voting representative of the Governor's Office		

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Small Business Health Insurance Pool Board of Directors (Insure Montana) (State Auditor) cont. Ms. M. Katherine Buckley-Patton, Helena Qualifications (if required): Management-Level Knowledge of Medicaid Services	Governor	1/1/2016
Statewide Independent Living Council (Public Health and Human Services) Ms. Astghik Iknatian, Billings Qualifications (if required): DPHHS Representative and ex-officio member	Governor	12/1/2015
Ms. Monique Casbeer, Missoula Qualifications (if required): Person with Disability not employed by a State Agency or Independent Living Center	Governor	12/1/2015
Mr. Robert Idol, Whitefish Qualifications (if required): Person with Disability not employed by a State Agency or Independent Living Center	Governor	12/1/2015
Traumatic Brain Injury Advisory Council (Public Health and Human Services) Dr. James Wright, Butte Qualifications (if required): Advocate of Brain Injured Persons	Governor	1/1/2016
Mr. Charles Gutierrez, Vaughn Qualifications (if required): Survivor	Governor	1/1/2016
Dr. Richard Felix, Saint Ignatius Qualifications (if required): Advocate for Brain-Injured Persons	Governor	1/1/2016
Board of Water Well Contractors (Natural Resources and Conservation) Mr. Pat Byrne, Great Falls Qualifications (if required): Water Well Contractor	Governor	1/1/2016