

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 4.5.206, 4.5.207, and 4.5.208) PROPOSED AMENDMENT
pertaining to the state noxious weed)
list)

TO: All Concerned Persons

1. On January 5, 2017, at 10:00 a.m. the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building at 302 N. Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on January 2, 2017, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts, Helena, Montana, 59601; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov.

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

4.5.206 PRIORITY 1A (1) These weeds are not present or have a very limited presence in Montana. Management criteria will require eradication if detected, education, and prevention:

- (a) Yellow starthistle (*Centaurea solstitialis*);
- (b) Dyer's woad (*Isatis tinctoria*); ~~and~~
- (c) Common reed (*Phragmites australis* ssp. *Australis*); and
- (d) Medusahead (*Taeniatherum caput-medusae*).

AUTH: 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The Noxious Weed Listing workgroup has recommended that medusahead be added as a Priority 1A Noxious Weed. Medusahead is an aggressive winter annual grass with prolific seed production that spreads at an average rate of 12% a year, outcompeting native vegetation and other invasive plants, even cheatgrass. It tends to occupy disturbed sites, wetlands, grasslands, agronomic fields, and rangeland. Clay soils and soil moisture available late in the growing season favor establishment of medusahead. Like cheatgrass, medusahead is also known to increase the frequency and intensity of wildfires. This Mediterranean native was introduced into the U.S. as a seed contaminant in the late 1880s. Confirmed infestation occurs in Sanders County, Montana.

ECONOMIC IMPACT: Medusahead eradication and containment efforts are ongoing. There should not be any additional costs over the existing costs of eradication and containment. The Montana Noxious Weed Trust Fund and the Salish Kootenai Tribe are covering medusahead eradication and containment efforts costs.

4.5.207 PRIORITY 1B (1) These weeds have limited presence in Montana. Management criteria will require eradication or containment and education:

- (a) Knotweed complex (*Polygonum cuspidatum*, *P. sachalinense*, *P. × bohemicum*, *Fallopia japonica*, *F. sachalinensis*, *F. × bohémica*, *Reynoutria japonica*, *R. sachalinensis*, and *R. × bohémica*);
- (b) Purple loosestrife (*Lythrum salicaria*);
- (c) Rush skeletonweed (*Chondrilla juncea*); ~~and~~
- (d) Scotch broom (*Cytisus scoparius*); and
- (e) Blueweed (*Echium vulgare*).

AUTH: 80-7-802, MCA

IMP: 7-22-2101, MCA

REASON: The Weed Listing Workgroup recommended reprioritizing blueweed from a Priority 2A to a Priority 1B weed. Eradication and containment efforts have been successful in containing this weed to limited areas in Sanders County in Montana.

ECONOMIC IMPACT: Change in blueweed prioritization on the noxious weed list will not have a fiscal impact because weed districts with known infestations manage this weed species now.

4.5.208 PRIORITY 2A (1) These weeds are common in isolated areas of Montana. Management criteria will require eradication or containment of these weeds where less abundant. Management shall be prioritized by local weed districts:

- (a) Tansy ragwort (*Senecio jacobaea*, *Jacobaea vulgaris*);
- (b) Meadow hawkweed complex (*Hieracium caespitosum*, *H. praealtum*, *H. floridundum*, and *Pilosella caespitosa*);
- (c) Orange hawkweed (*Hieracium aurantiacum*, *Pilosella aurantiaca*);
- (d) Tall buttercup (*Ranunculus acris*);
- (e) Perennial pepperweed (*Lepidium latifolium*);
- (f) Yellowflag iris (*Iris pseudacorus*);
- ~~(g) Blueweed (*Echium vulgare*);~~
- (~~h~~) Eurasian watermilfoil complex (*Myriophyllum spicatum* and *M. sibiricum*); ~~and~~
- (~~h~~) Flowering rush (*Butomus umbellatus*); and
- (i) Common buckthorn (*Rhamnus cathartica*).

AUTH: 80-7-802, MCA

IMP: 7-22-2101, MCA

REASON: The Noxious Weed Listing workgroup recommended changing the noxious weed listing for blueweed from Priority 2A to Priority 1B. The current Priority 2A designation does not reflect the current weed infestations and blueweed is more appropriately listed as a Priority 1B noxious weed. The change will give county weed districts greater flexibility in addressing control of this weed species.

The Noxious Weed Listing workgroup also recommended listing both species of non-native watermilfoil to the noxious weed list and listing them as a complex.

Common buckthorn is a native to Europe and Western Asia. Common buckthorn came into the U.S. as an ornamental hedge and shelterbelt plant. Common buckthorn forms dense stands capable of crowding and shading out native understory plants. It is allelopathic, inhibiting germination and growth of other plants. This invasive can outcompete other plants for available nutrients, light, and moisture. Common buckthorn is a prolific seed producer, is adaptable to a wide variety of habitats and thrives in a variety of soil types (well drained sandy soil, clay soils, and poorly drained calcareous and alkaline soils), and is particularly aggressive in wet or moist soils. This plant is an alternative host for oat crown or leaf rust caused by *Puccinia coronata*. *Puccinia coronata* also is responsible for crown rust found in barley and forage grasses. Soybean aphids, a vector source of Potato Virus Y, use common buckthorn as an overwintering host. The bark, leaves, and fruit produce a strong laxative effect when eaten and can cause poisoning in cattle and impact both milk production and milk quality. Common buckthorn infests in nine counties in Montana.

ECONOMIC IMPACT: Change in blueweed prioritization on the noxious weed list will not have a fiscal impact because weed districts with known infestations manage this weed species now. The fiscal impact of adding common buckthorn to the noxious weed list is unknown at this time. Counties need to conduct surveys for this weed species to better understand the extent of infestation and the management efforts (and cost) of managing this species. Missoula Parks and Recreation indicated control is time consuming and expensive.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, 302 N. Roberts, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., January 9, 2017.

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

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

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. 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 rules will not significantly and directly impact small businesses.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Agriculture

Certified to the Secretary of State November 28, 2016.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PUBLIC HEARING ON
RULE I and NEW RULE II,	)	PROPOSED ADOPTION,
amendment of 4.10.201, 4.10.203,	)	AMENDMENT, AND REPEAL
4.10.205, 4.10.207, 4.10.315,)	
4.10.401, 4.10.501, 4.10.503,)	
4.10.701, 4.10.807, 4.10.1004,)	
4.10.1009, 4.10.1102, 4.10.1103,)	
4.10.1104, 4.10.1201, 4.10.1204,)	
4.10.1803, 4.10.1804, 4.10.1806, and)	
repeal of 4.10.702, 4.10.709,)	
4.10.1801 pertaining to pesticide)	
housekeeping changes)	

TO: All Concerned Persons

1. On January 4, 2017, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on December 30, 2016, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, 302 N. Roberts, Helena, Montana, 59601; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov.

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

NEW RULE I PESTICIDE CONTAINER RECYCLING PROGRAM (1) The program only accepts high-density polyethylene (HDPE) #2 pesticide and pesticide-related container plastic (e.g., seed treatment, surfactant, adjuvants, and dye containers) for recycling.

(2) The program does not accept non-plastic containers and non-pesticide containers for recycling.

(3) All containers must be properly prepared for recycling:

(a) Emptied and triple or power rinsed to remove pesticide residues. The container owner is responsible for cleaning and rinsing pesticide containers and complying with all pesticide label requirements;

(b) Removal of the following from the pesticide container:

(i) lid and foil liner;

(ii) label booklets (glued on labels may remain on the container);

(iii) rubber gaskets; and

(iv) metal handles.

(c) Containers larger than 2.5 gallon may require cutting into smaller pieces.

Please contact the department for more information.

(4) The department does not accept improperly prepared and cleaned containers.

(5) The department posts a map of collection sites on its web site. Prior to delivering clean containers to an established collection site, individuals recycling pesticide containers should contact the collection site manager. Established collection sites accept properly prepared small containers (less than 2.5 gallon), 2.5 gallon containers, and 30 and 55 gallon containers.

(6) Individuals must contact the department to discuss recycling of larger pesticide containers (more than 55 gallon).

(7) The department approves establishment of collection sites, public or private, meeting minimum requirements. Individuals or entities interested in establishing a collection site must contact the department to discuss requirements and considerations (e.g., site selection, construction specifications, and site hosting considerations).

(8) The department recycling technician services all pre-determined collection sites to grind and bag all pesticide plastic during the recycling season.

(9) Department of Environmental Quality (DEQ) registration and EPA hazardous waste identification number is not required for a contractor involved solely in recycling pesticide plastic containers.

(10) The department may contract for part or all of the operational aspects of a pesticide recycling program. Contractors must meet all state qualifications and state regulations.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The proposed change creates a rule specific for pesticide container recycling. The rule reflects the current requirements and practices of the program, provides additional information for program participants, and provides for a section of a rule for pesticide recycling separate from waste pesticides and exchangeable pesticides.

ECONOMIC IMPACT: There is no economic impact associated with this rule adoption.

NEW RULE II EXCHANGEABLE PESTICIDES (1) The department allows the exchange or transfer of a pesticide for the purpose of using the pesticide according to label directions and establishes the following procedures for the exchange of exchangeable pesticides:

(a) the pesticide offered for exchange must be:

(i) registered or meet the provisions of 80-8-201(9), MCA;

(ii) unreturnable; and

(iii) in the original, labeled container.

(b) owners of exchangeable pesticides must contact the department and provide needed information to facilitate a pesticide exchange or transfer;

(c) persons wanting to receive exchangeable pesticides must provide to the department their name, address, telephone number, and the exchangeable pesticides they want to receive. Only persons licensed to use restricted use pesticides may receive restricted use pesticides;

(d) the department will facilitate matches between donors to users;

(e) transfer of ownership of exchangeable pesticides may occur during scheduled pesticide disposal collections or through other arrangements approved by the department; and

(f) the department may require analysis of the pesticide offered for exchange for label claim.

(2) The department will keep records of all pesticides exchanged or transferred under the exchangeable pesticide program for a period of five years.

AUTH: 80-8-105, MCA

IMP: 80-8-111, 80-8-112, MCA

REASON: The rule change creates a distinct section of rule related to Exchangeable Pesticide, separate from Waste Pesticide Disposal and Pesticide Container Recycling. It also creates a new requirement that the department keep records of pesticide transfers and exchanges.

ECONOMIC IMPACT: There is no economic impact associated with reorganization of the rules. There may be a fee associated with exchangeable pesticides, addressed in the amendment to ARM 4.10.1806 (also contained in this proposal notice).

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

4.10.201 PESTICIDE APPLICATOR LICENSING REQUIREMENTS (1) An individual using or applying pesticides ~~who~~ by contract or for hire ~~uses or applies pesticides and~~ not under the special supervision of a licensed applicator must ~~is~~ required to become a licensed license as a commercial pesticide applicator, except as provided for in these rules. Each pesticide applicator business location must have a licensed pesticide applicator. ~~Any owner~~ Owners or ~~person who has~~ persons having a financial interest in a pesticide applicator business may appoint a partner or ~~salaried~~ employee to become the licensed pesticide applicator. The owners or persons having ~~the a~~ financial interest in a pesticide application business shall continue to assume and ~~is~~ are financially responsible for all uses and applications of a pesticide. ~~The owner, manager, or licensed applicator of a pesticide applicator business may elect to have some or all of the employees of the business licensed as applicators.~~

(2) A person must apply to the department for a license, completing all requirements of the application process, paying associated fees, and submitting required documents, such as a completed statement of financial responsibility. The

department communicates application material deficiencies and identifies conditions and standards not met to applicants submitting incomplete applications or not meeting licensing conditions or standards. on the department's application form. The application must be completed in its entirety, accompanied by the licensing fee and a completed statement of financial responsibility. Applicants submitting incomplete applications and not meeting the conditions and standards expressed in the Act and department rules will be notified of such deficiencies and the procedure for correcting the deficiencies. The department will return the application along with the notice.

(3) ~~Nonresident applicants shall~~ must also be required to submit a completed service of process form ~~the license application, fee, financial responsibility and a completed form provided by the department designating an agent for service of process in the state, along~~ with the appropriate fee for filing, payable to the Secretary of State. The service of process shall ~~must~~ remain valid until cancelled or modified.

(a) A nonresident corporation having, ~~which has an effective certificate of process shall~~ must:

(i) appoint its own resident agent or attorney upon whom the state makes service of process ~~may be made in such causes of action, ; and such service when so made shall~~

(ii) be valid service on the agent or attorney. ; ~~Service of process for these corporations shall~~

(iii) apply to all employees transacting business in the state; and ~~The corporation shall~~

(iv) provide to the department a list of its employees licensed as pesticide applicators and prospective pesticide applicators and any subsequent revisions of the list, for those employees licensed or to be licensed as pesticide applicators.

(b) A nonresident individual or partnership may designate the Secretary of State as its lawful agent or attorney upon whom the state makes ~~service of process may be made in such causes of action, ; and such~~ Such ~~service when so made shall~~ must be valid service on the Secretary of State. Service of process for individuals or partnerships ~~shall apply~~ applies to all employees transacting business in the state. The individual or partnership ~~shall~~ must provide to the department a list and any subsequent revision of the list of the employees currently and those prospectively licensed as pesticide applicators. ~~and subsequent revision of the list for those employees licensed or to be licensed as pesticide applicators.~~

(c) A nonresident corporation ~~which does not have an effective certificate of authority from the Secretary of State to transact its business in Montana and which does not transacting business in Montana so as to require~~ requiring it to procure such a certificate of authority may designate the Secretary of State as its lawful agent or attorney upon whom the state makes ~~service of process may be made in such causes of action, ; and such~~ Such ~~service when so made on the Secretary of State shall~~ must constitute valid service. Service of process for corporations ~~shall~~ must apply to all its employees transacting business in the state. The corporation ~~shall~~ must provide to the department a list and any subsequent revision of the list of its employees currently licensed as pesticide applicators and those prospective

~~pesticide applicators, and subsequent revision of the list for those employees licensed or to be licensed as pesticide applicators.~~

(4) An individual applying for a public utility applicator's license ~~shall be required to~~ must meet the same conditions and standards established within these rules for commercial applicators. For purposes of this subchapter, "public utility" means any governmental organization supplying water, electricity, transportation, etc. to the public, including utilities operated by a private entity under governmental regulation.

(5) An individual applying for a government applicator's license ~~shall be required to~~ must meet the conditions and standards of these rules except for those specifically exempted in the Act. The department may accept for certification ~~these~~ federal employees certified through an EPA-approved federal agency certification program or ~~if the certification of an employee has been~~ certified by another state with comparable requirements and standards of the department. The department reserves the responsibility to require federal employees to meet any special state certification standards.

(6) ~~These individuals~~ A noncommercial applicator is an individual not who cannot be classified as a commercial, public utility, or government pesticide applicator and not or who cannot be classified as a farm applicator, but desire the use of using restricted-use pesticides, ~~shall be considered to be noncommercial applicators.~~

(a) ~~The noncommercial~~ Noncommercial applicators ~~desiring to use restricted use pesticides in the state shall be required to~~ must meet the same requirements and are subject to the same processes as commercial applicators:

(i) application, process;

(ii) certification, including examination, qualification, and general and specific competency standards;

(iii) classification;

(iv) recertification;

(v) recordkeeping; requalification, and

(vi) other related pesticide usage and application standards as required of commercial applicators by the Act.

~~(b) These individuals shall be classified into one of the categories established for commercial applicators.~~

~~(eb)~~ Certified noncommercial applicators may only use restricted use pesticides on lands owned, rented, or leased by his/her employer or himself/herself.

~~(dc)~~ Noncommercial applicators, whether certified or not, violating the Act or these rules ~~shall be~~ are subject to the same penalties and administrative procedures as commercial applicators.

(7) ~~The department issues~~ No a licenses only after an individual passes all required examinations or completes required, approved recertification training shall be issued to any person until the and submits a completed application, and licensing fees, and all examination or requalification requirements are fulfilled and approved by the department.

(8) A licensed pesticide applicator changing his their employment to another company or business within a licensing period ~~shall be required to~~ must submit his their license and any employee licenses referenced to his their license to the

department for cancellation. The applicator, by submission of a written request or application, may request the issuance of a new license. ~~If if the applicator paid the license fee, the department will reissue the license. If the~~ The company or business originally employing the applicator ~~paid~~ must pay the license fee before the department reissues a license., ~~the department shall not reissue the applicator's license until the fee is paid by the applicator or the applicator's new employer.~~ If the original company paid the licensing fee, the department will credit the fee to the company for issuance of another applicator's license within the same licensing period provided for applicants taking and passing the required written examination(s) or for an applicant already certified ~~that the license must not be issued until the applicant passes the required written examination or is already an approved applicator.~~ Licenses and licensing fees ~~must~~ are not be transferable between licensing periods.

(9) An applicator not renewing and maintaining ~~his~~ their license and certification within the established ~~qualification~~ recertification period ~~shall be required to~~ must retake and pass the complete examination series prior to the issuance of a new license at the beginning of the next ~~qualification~~ certification period. The applicator may maintain ~~his~~ their qualifications by attending approved ~~requalification programs~~ recertification training for a time period not to exceed four years. The applicator ~~will be required to~~ must maintain ~~his~~ their records of requalification, ~~for submission to the department for relicensing.~~ The department reserves the right to require special examination(s) on new requirements or technology.

(10) Applicators and their employees licensed as applicators or operators ~~shall~~ must reveal their license upon request by any individual or business, for whom the applicator or ~~his~~ their employee is performing pesticide applications or to an authorized representative of the department.

(a) When an applicator terminates ~~his~~ their employment, ~~or transfers,~~ his license, ~~or modifies,~~ or cancels ~~his~~ their license, all employee operator licenses issued under the applicator's name and license ~~are~~ also terminated, ~~modified~~ modify, or cancelled. Employees certified as applicators may retain their license provided that their financial responsibility is still valid. ~~New~~ The department issues new licenses ~~will be issued~~ to employee operators previously licensed once the business ~~has appointed~~ appoints a new supervisory certified applicator.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The proposed rule eliminates the term "salaried" which carries no special meaning. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with this rule change.

4.10.203 COMPETENCY STANDARDS FOR CERTIFICATION OF PESTICIDE APPLICATORS (1) An individual applying for a commercial, public

utility, governmental, or noncommercial applicator's license shall be required to must pass a written examination prior to issuance of a license.

(a) ~~Examinations may be taken~~ Applicants may take examinations at the department's Helena office or the applicant may make arrangements for examination at other locations in the state or in other states at the convenience and approval of the department.

(b) Any individual applying for a license shall must meet the general and specific competency standards of ARM 4.10.204 and 4.10.205.

(c) ~~The competency of applicants shall be determined by their knowledge and passage of written~~ Written examinations on the subjects set forth in the department's designated manuals for applicators, including revisions, and any other manual, guide, or materials as designated by the department determine applicant competency. ~~Examination questions will be derived from these manuals and their degree of difficulty will be based upon the degree of importance established by the department for the various subject areas.~~ The department establishes examination question difficulty on the degree of importance of the various subject areas found in the manuals, guides, and materials.

(d) The department may accept the an applicant's examination scores from other states if the examination or examinations are equivalent to the department's examination. However, applicants must meet all other standards and requirements of the department must be met by the applicant. All out-of-state applicators ~~will be required to~~ must take and pass an examination based on the Montana Pesticide Act and these rules with a score. ~~The scores required are~~ as set forth in (3).

(2) remains the same.

(3) The minimum passing score for applicants ~~is~~ shall be:

(a) 80% for the core pesticide examination, and 80% for each respective specific examination required.

(b) ~~Applicators licensed prior to April 30, 2010 who did not receive a score of 80% or higher on their core pesticide examination and/or specific classification examinations must retest or have obtained 12 hours of recertification training approved by the department before April 30, 2011.~~

(4) An applicant not receiving a passing score on one or more of the examinations ~~shall be required to~~ must retake and pass the failed examination(s) prior to issuance of a license. The applicant taking more than one specific examination may elect to ~~be certified~~ certify only for the specific examination(s) passed if the applicant has passed the core pesticide examination, and at least one specific examination.

(a) Applicants failing the core pesticide examination or any other examination the first time ~~shall not be allowed~~ must wait seven days to retake the examination(s). ~~for seven days after notification of failure.~~ Applicants failing the examination(s) a second time may ~~retake the examination(s)~~ must wait 15 days after notification to retake the examination(s). Applicants failing the examination(s) a third time ~~shall not be allowed to retake the examination(s)~~ must wait until the next licensing period beginning January 1 of the next year to retake the examination(s). ~~Reexamination may be taken~~ Applicants may retake examination(s) at the department's Helena office or ~~the applicant~~ may make arrangements for reexamination at other locations in the state or in other states at the convenience and approval of the department.

(5) Applicators ~~shall be required to requalify~~ must recertify for licensing prior to every fifth licensing period.

(a) The department has a staggered four-year ~~requalification~~ recertification time period designated by applicator classification and subclassification. Applicator classifications must requalify by December 31 of the year designated by the department. Thereafter the qualification period extends from January 1 through December 31 of the next four-year cycle.

(b) Applicators may recertify ~~requalification must be accomplished~~ by either passing the complete examination series or by attending 12 hours of training approved by the department. Fifty minutes of qualifying training is eligible for one recertification credit. The department assigns each approved training course a minimum of one credit and a maximum of six credits. ~~Courses must be either six, five, four, three, or two hours.~~ An applicator ~~requalifying for certification~~ recertifying by attending pesticide training courses must have written verification of his/her attendance.

(6) The department retains the right to approve or disapprove training courses relative to meeting the qualifications for recertification. Training course sponsors must ~~petition~~ submit their training course to the department for approval of ~~their courses~~ at least 30 days prior to ~~being held~~ the training event. The ~~petition request~~ must include:

(a) the training date(s), time, and location(s); ~~projected attendance, speakers, and a synopsis of their presentations.~~

(b) registration information;

(c) start and end time of each presentation;

(d) presentation synopsis; and

(e) name, affiliation, and biography of each presenter.

(7) remains the same.

AUTH: 80-8-105, MCA

IMP: 80-8-105, 80-8-206, MCA

REASON: The change proposes an elimination of outdated requirements for compliance. Applicants should now be in compliance making the language obsolete. The proposal modifies credits for training courses, providing the opportunity to earn one recertification credit. The department is reducing the active training time for each credit to 50 minutes (rather than 60 minutes) to more closely align with industry standards. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with these changes.

4.10.205 SPECIFIC STANDARDS OF COMPETENCY FOR EACH APPLICATOR CLASSIFICATION (1) Certified commercial, public utility, government, and noncommercial pesticide applicators ~~shall be examined~~ must pass an examination and meet the certification qualifications ~~qualified~~ with respect to the following practical knowledge standards:

(a) Agricultural pest control applicators, ~~may be~~ classified into one of three areas:

(i) Plant applicators must demonstrate practical knowledge of:

(A) crops grown;

(B) and the specific crop pests, including their identification, life cycles, behavior, signs and damage caused to of these crops on which they may be using pesticides. pesticides may occur;

(C) The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems; preharvest intervals,

(D) pesticide reentry and preharvest intervals;

(E) phytotoxicity; and

(F) potential for environmental contamination, non-target injury, and community problems resulting from the use of pesticides in agricultural areas. The extensive agricultural areas involved, the quantities and types of pesticides used, and ultimately the intended use of many commodities as food and feed amplify the importance of such competency.

(ii) Animal applicators applying pesticides directly to animals must demonstrate practical knowledge of:

(A) such animals and their associated pests, including their identification, life cycles, behavior signs and damage caused to animals; A practical knowledge concerning

(B) animal specific pesticide toxicity and residue potential is also required since host animals will frequently be used for food; and Further, the applicator must know

(C) the relative hazards associated with such factors as formulation, application techniques, extent of treatment and age and stress of animals, stress, and extent of treatment.

(iii) Vertebrate pest applicators must demonstrate practical knowledge of or about the:

(A) identification, behavior, signs and damage caused by vertebrates pests upon which pesticide use may occur; for which they may be using pesticides. They should possess practical knowledge of the

(B) cyclic occurrence of certain pests; and specific

(C) habitat, weather and population dynamics, as a basis for programming pesticide applications. and how these interact to create conditions for population spikes, and how to use this information to control efforts; and The applicator must demonstrate a practical knowledge of

(D) control and application methods which will that minimize the possibility of secondary problems such as unintended effects on wildlife. These applicators must demonstrate knowledge of the use of these pesticides which will minimize or prevent hazards to humans, pets, and other domestic animals and non-target wildlife.

(b) Forest pest control applicators shall must demonstrate practical knowledge of:

(i) the forest types of forest, forest nurseries, and seed production; in their state and the

(ii) forest pests involved, their identification and life cycles, the behavior, signs and symptoms of these pests; They should possess practical knowledge of the

(iii) cyclic occurrences of certain pests and specific population dynamics and how they serve as a basis for programming pesticide applications. planning; A practical knowledge of the relative

(iv) biotic agents and their vulnerability to the pesticides to be applied is required. applied pesticides; Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of

(v) control methods which will that minimize the possibility of secondary problems such as unintended effects on wildlife. (Large forest stands frequently include natural aquatic habitats and harbor wildlife, making the consequences of pesticide use difficult to assess); and

(vi) Proper use of specialized equipment, must be demonstrated, especially as it may be related relates to meteorological factors and adjacent land use.

(c) Ornamental and turf pest control applicators shall must demonstrate practical knowledge of:

(i) pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf; including cognizance of

(ii) potential phytotoxicity because of the due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control; and

(iii) application methods that minimize or prevent hazards to humans, pests, and other domestic animals Because of due to the frequent proximity of human habitations to application activities, applicators in this classification must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

(d) Seed treatment and elevator pest control applicators shall must demonstrate practical knowledge of the:

(i) types of seeds that require pesticide protection against pests;

(ii) and factors that influence pesticide binding and germination such as seed coloration, carriers, and surface active agents; which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of

(iii) hazards associated with handling, sorting and mixing; and proper disposal of unused treated seed;

(iv) and potential for misuse of treated seed such as the introduction of treated seed into food and feed channels as well as proper disposal of unused treated seeds; and

(v) herbicides, rodenticides and avicides used in and around structures.

(vi) Applicators must also demonstrate proper use of:

(A) grain fumigants to protect seeds;

(B) knowledge of the safe handling and application techniques;

(C) worker exposure and protection considerations; and

~~(D) reentry standards into for fumigated structures. They must demonstrate practical knowledge of using herbicides around and rodenticides and avicides in and around these structures.~~

(e) Aquatic pest control applicators shall must demonstrate practical knowledge of:

(i) the aquatic environments;

(ii) aquatic pests, including their life cycles;

(iii) potential secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this classification. They shall demonstrate practical knowledge of;

(iv) various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning;

(v) potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in the target aquatic environments. These applicators shall demonstrate practical knowledge of the principles of; and

(vi) limited area application principles.

(f) Right-of-way, rangeland, pasture, and non-crop pest control applicators are applicators who apply pesticides and who shall must demonstrate practical knowledge of or about:

(i) a wide variety of environments since right-of-way, rangeland, pasture, and non-crop sites can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of;

(ii) problems associated with on runoff, drift, excessive foliage destruction, and potential effects to livestock and non-target organisms. Applicators must have the ability to recognize;

(iii) target plants and how to differentiate them from non-target plants. They shall also demonstrate practical knowledge of;

(iv) the nature of herbicides;

(v) keeping pesticides within the target application site; and the need for containment of these pesticides within the target application site, and

(vi) the potential impact of their herbicide applications activities in the to adjacent areas and communities.

(g) Industrial, institutional, structural, and health related pest control applicators must demonstrate a practical knowledge of:

(i) a wide variety of pests and their life cycles;

(ii) types of formulations appropriate for their pest control, and;

(iii) methods of application that avoid contamination of food, damage and contamination of habitat and exposure of people and pets;

(iv) specific factors which may lead to a hazardous condition, including continuous exposure in various situations encountered in this classification (since Since human exposure includes babies, children, pregnant women, and elderly people and is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this classification. Because health-related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this activity.); and

(v) environmental conditions that involve outdoor applications.

~~(+)~~ (vi) School integrated pest management applicators, in addition to the knowledge required by applicators in the industrial, institutional, structural, and health-related category, must demonstrate a practical knowledge in of:

(A) the principles of integrated pest management; and a knowledge of

(B) pesticides registered for use in the school environment, in addition to the knowledge required by applicators in the industrial, institutional, structural, and health-related category.

~~(h)~~ Wood product pest control applicators ~~shall~~ must demonstrate practical knowledge of:

~~(i) the specific wood preservative products used in their operation (creosote, pentachlorophenol, inorganic arsenicals). They shall be knowledgeable about the;~~

~~(ii) protective clothing and equipment requirements, and the requirements for including proper care and disposal of work clothing and equipment. They shall demonstrate practical knowledge of;~~

~~(iii) application techniques which will that prevent direct exposure to domestic animals and livestock, or in contamination of food, feed or drinking and irrigation water. They shall be aware of;~~

~~(iv) the prohibitions against eating, drinking and smoking and other potential avenues of work exposure while applying wood preservative chemicals. They must demonstrate practical knowledge of;~~

~~(v) hazards of handling treated products as well as the requirements for proper disposal of pesticide waste. They must be familiar with; and~~

~~(vi) the eConsumer aAwareness pProgram [CAP], which will be implemented through the use of Consumer Information Sheets [CIS's] provided to the end users of the products (consuming public).~~

~~(i)~~ Public health pest control applicators ~~shall~~ must demonstrate practical knowledge of:

~~(i) vector-disease transmission as and how it relates to and influences application programs. A;~~

~~(ii) a wide variety of public health pests, are involved. It is essential that they be known as recognized and their appropriate life cycles and habitats, be understood as a basis for control strategy. and an understanding of how this knowledge serves as a basis for control strategies; These applicators shall have practical knowledge of~~

~~(iii) a great variety of environments ranging from streams to these conditions found in buildings. They should also have practical knowledge of; and~~

~~(iv) the importance and employment of such nonchemical control methods such as sanitation, waste disposal, and drainage.~~

~~(j)~~ Regulatory pest control applicators ~~shall~~ must demonstrate practical knowledge of:

~~(i) regulated pests, and the factors influencing pest introduction, spread, and population dynamics;~~

~~(ii) applicable quarantine laws relating to quarantine and other pest regulations; and of pests, and~~

(iii) the potential environmental impact ~~on the environment~~ of pesticides used in suppression and eradication programs. ~~They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests.~~

(iv) In the case of some federal agency applicators, their knowledge shall must extend beyond that required by their immediate duties since their services are frequently required in other areas of the country ~~where~~ that may involve invoking regulated pest control emergency measures are ~~invoked~~ to control regulated pests, and ~~where~~ making individual judgments ~~must be made~~ in new situations.

(k) Demonstration and research pest control applicators demonstrating the safe and effective use of pesticides to other applicators and the public ~~will be expected to~~ must meet comprehensive standards reflecting a broad spectrum of pesticide use. ~~Applicators encounter M~~many different problem situations ~~will be encountered~~ in the course of activities associated with research and demonstrations. Demonstration and research applicators must possess Ppractical knowledge and an understanding of:

(i) problems, pests, and population levels occurring in each demonstration situation ~~is required. Further, they should demonstrate an understanding of~~;

(ii) pesticide organism interactions and the importance of integrating pesticide use with other control methods. ~~In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of; and~~

(iii) all the standards detailed in ARM 4.10.204.

(iv) In addition, they shall must meet the specific standards required for classifications in (1)(a) through (g) applicable to their particular activity. Persons conducting field research or method improvement work with restricted-use pesticides ~~shall be expected to~~ must know the general standards required for classifications in (1)(a) through (j), applicable to their particular activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration_".

(l) Special utility pest control applicators shall must demonstrate practical knowledge of:

(i) a wide variety of utility right-of-way environments. ~~They shall demonstrate practical knowledge of~~;

(ii) problems ~~on~~ associated with runoff, drift and excessive foliage destruction;

(iii) target organisms and ~~the~~ ability to recognize target organisms. ~~They shall also demonstrate practical knowledge of them~~;

(iv) the nature of herbicides and soil sterilants, the need for ~~containment of~~ to keep these pesticides within the designated target areas, and the impact of their application activities in the adjacent areas. ~~They shall demonstrate practical knowledge of the specific~~;

(v) wood preservative products used in their specific operations; ~~They shall be knowledgeable about the~~

(vi) protective clothing and equipment requirements, including their and the requirements for proper care and disposal; ~~of work clothing and equipment. They shall demonstrate practical knowledge of~~

~~(vii) application techniques which will that prevent direct exposure to domestic animals and livestock, or in contamination of food, feed or drinking and irrigation water. They shall be aware of;~~

~~(viii) the prohibitions against eating, drinking and smoking and other potential avenues of work exposure while applying wood preservative chemicals. They must demonstrate practical knowledge of; and~~

~~(ix) the hazards of handling treated products as well as the requirements for proper disposal of pesticide waste.~~

~~(m) Pesticide pest control applicators shall must demonstrate a knowledge of;~~

~~(i) registered pesticides; and;~~

~~(ii) safety practices for use, storage and transportation. They shall demonstrate practical knowledge of the;~~

~~(iii) potential secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this classification. They shall demonstrate practical knowledge of pesticides;~~

~~(iv) various water use situations, the and potential of downstream effects and;~~

~~(v) pesticide decontamination procedures. They must have practical knowledge concerning;~~

~~(vi) potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. They must show practical knowledge of;~~

~~(vii) water chemistry;~~

~~(viii) pest identification; and the aquatic ecology within the aquatic environment. Applicators must also have knowledge of;~~

~~(ix) applicable laws and regulations related to introduction of pesticides into state waters, and demonstrate practical knowledge of the principles of; and~~

~~(x) limited area application principles.~~

~~(n) Aerial applicators shall must demonstrate practical knowledge of;~~

~~(i) aerial applicator pilot laws and regulations for aerial applicator pilots;~~

~~(ii) pesticide operations and application safety;~~

~~(iii) calibrating aerial application equipment;~~

~~(iv) preventing pesticide drift;~~

~~(v) aerial pesticide dispersal systems; and~~

~~(vi) calibrating aerial application equipment, and making an aerial pesticide applications.~~

AUTH: 80-8-105, MCA

IMP: 80-8-105, 80-8-206, MCA

REASON: The competency standard for vertebrate pest applicators lacks the same level of detail of other pesticide applicator categories. The proposed rule adds to the expected standards of competency, ensuring that applicators are well informed, resulting in better success in management and control of vertebrate pests. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact with this rule change.

4.10.207 RECORDS (1) All certified commercial, public utility, government, certified noncommercial applicators and their operators shall be required to must keep and maintain operational records for two years. Applicators or operators must make a record of For every application performed either by an applicator or operator, ~~the application record must include~~ that includes:

(a) The name of the applicator or operator applying the pesticide. Initials or an assigned number are acceptable if the full name of the applicator or operator is cross-referenced and accessible to the department.

(b) ~~The following items:~~ date and time (application begin and end).

~~(i) date;~~

~~(ii) time should be specific;~~

~~(iii) The location must include including the property owner's or lessee's name and address where the pesticide was applied.~~ application occurred and the:

~~(i) The specific application site must be expressed by township, range, and section numbers;~~ or

~~(ii) local identifiable landmarks;~~ or

~~(iii) latitude and longitude coordinates;~~ or

~~(iv) general terms of identifiable landmarks for Right-of-way applications may be expressed in general terms of identifiable landmarks;~~ or

~~(v) other identifiable landmarks (by site, building, facility or premise) for Nonagricultural applications may specify the site, building, facility, premise, or other identifiable landmarks.~~

~~(ed) If all applications used the same piece of equipment, is used for all applications, then this equipment the applicator may be listed list the equipment only once. If Applicators using more than one piece of equipment is utilized, the applicator may assign a number to each piece of equipment and list the equipment once by description and thereafter by number.~~

~~(de) The pesticide or pesticides used must include the company name, trade name, and the EPA registration number or the type of formulation.~~

~~(ef) The rate of application must includes the amount of formulated product and diluent/carrier (if other than water) per gallon of water formulation rate and the diluent to be sprayed on a given unit area. Examples:~~

~~(i) 1 pint of product per 5 gallons of water per acre (1 pt./5 gal. water/acre);~~

~~(ii) 2 oz. ounces of product per 1 gallon water per 100 sq. ft. (2 oz./1 gal. water/100 sq. ft.);~~

~~(iii) 1 pint of product per 100 pounds of fertilizer per acre (1 pt./100 lbs. fertilizer/acre).~~

~~(fg) The amount of area treated in (number of acres, trees, livestock, square feet or yards, etc.), or the type of treatment for structural, seed treatment or wood product applications, indicate the type of treatment.~~

~~(gh) The primary pest or pests involved.~~

~~(hi) The site or crop or site treated, if applicable, and the stage of crop development, if applicable.~~

(ij) Weather conditions such as wind speed, direction and temperature if applicable. ~~Outdoor applications generally require the recording of some weather conditions.~~

(2) Applicators utilizing two or more pesticides in a tank mixture ~~shall be required to~~ must record all required data as required for each pesticide in the tank mix.

(3) Applicators ~~shall~~ must maintain application records on a daily basis not to exceed 24 hours from the time of the last application.

(4) Applicator records ~~shall be~~ must open to inspection by authorized employees of the department during all business hours. Applicators ~~shall be required to~~ must submit written copies of their records or any portion of the records when requested in writing by the department.

(5) Seed treaters and wood product treaters ~~shall only be required to~~ must maintain records only on the volumes of pesticides applied and the other items set forth in (1)(a), (b), ~~(i)~~ (de), (ef), and (fg).

(6) As ruled by opinion of the Montana attorney general (Vol. No. 38, Opinion No. 1), public disclosure applies to pesticide applicator and dealer records held by the Department of Agriculture ~~are subject to public disclosure unless the department finds that the applicator's or dealer's right to privacy clearly outweighs the public's right to know, a~~ Such determination ~~will be considered under department policy made~~ on a case by case basis.

(a) There will, however, be no department publication of any information of these records which may disclose operations of selling, production or use of pesticides by any person. Such prohibition has been declared under ~~section~~ 80-8-107, MCA and confirmed under department interpretation of a letter of explanation to the above-cited opinion from the attorney general.

(7) Applicators, upon written request of the department, ~~shall~~ must submit to the department an accurate typed or printed record of each application performed with all ~~restricted~~ pesticides, or those restricted pesticides specifically named by the department. The Applicators must submit the requested records shall be submitted within 14 calendar days of the department's request or as otherwise requested by the department on the standard form provided by the department or on forms approved by the department. The request for records may include the records for the complete calendar year. ~~The records shall be submitted on the standard form provided by the department or on forms approved by the department. The record shall~~ Records must contain the following items listed in this rule: (1)(a), (b) ~~(i)~~, ~~(ii)~~, ~~(c)~~, ~~(d)~~, (e), (f), (g), (h), (i), and (2). The record may contain all the items listed in sections (1) and (2).

(a) If no applications of the ~~restricted use~~ pesticides are made occurred during the requested time period, applicators must ~~this must be documented~~ this to the department.

~~(8) Applicators shall submit to the department an accurate typed or printed report of their use of restricted and general use pesticides every fifth year beginning in calendar year 1990 and thereafter every five years. The report must include a summary of use of these pesticides by county, total acreage, amount of the formulated product used, the product used by company name and trade name, and the EPA registration number for the fifth year only. The report must be submitted to~~

~~the department by January 31 of the next year. The report must be submitted on the standard form provided by the department or on forms approved by the department.~~

~~(a) If no application of general and/or restricted-use pesticides are made during the calendar year, this must be documented by the department.~~

~~(9) Farm applicators are exempt from the requirements of this rule, unless a specific reporting requirement is established in another rule.~~

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The proposed rule clarifies that applicators do not need to record water as a diluent or carrier and that site and crop information is required while stage of crop is required only when applicable. When the department is requesting pesticide application information under (7), the department will have a specific purpose in mind and therefore will specify in the records request the needed information. In addition, when assessing, evaluating, inspecting, or investigating incidents, situations, and conditions, the department needs to know about all applications, not just restricted-use products. The proposed rule also eliminates fifth-year reporting. Fifth-year reporting is an unnecessary burden for applicators and records are not used for any specific purpose by the department. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with clarifying record content requirements. There may be a positive economic impact associated with eliminating fifth-year reports and not incurring mailing costs.

4.10.315 APPLICATOR RECORDS (1) All applicators, including farm applicators, must maintain and submit, upon request by the department, a record of each restricted-use aquatic herbicide application.

(a) These records shall must include:

(i) through (v) remain the same.

(vi) weeds controlled; and

(vii) type of equipment used and method of application.

(b) These records will satisfy reporting requirements for all non-farm applicators described within ARM 4.10.207(1). ~~The records required in ARM 4.10.315 will satisfy the requirements for applicators subject to ARM 4.10.208(8). Farm applicators are exempt from the reporting requirements of ARM 4.10.207(8).~~

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The proposed rule corrects administrative rule reference. ARM 4.10.208 is about inconsistent use as it relates to labeling or department-imposed restrictions and is not about record keeping requirements. ARM 4.10.208(8) does not exist. ARM 4.10.207(8), which the rule should reference instead of 4.10.208(8), is about

fifth-year reporting requirements, proposed for repeal. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with this rule change.

4.10.401 FARM APPLICATOR CERTIFICATION (1) A farm applicator desiring to use and apply restricted use pesticides ~~shall be required to~~ must make application for a special use permit or certificate on a form approved by the department. Applicants must complete the ~~Each~~ application form ~~shall be completed~~ in its entirety and pay the permit fee prior to processing by the department.

(a) ~~Applicants,~~ The department issues a permit to purchase and use restricted use pesticides to applicants who have completed the application form, paid the fee, and passed the required examination or have attended an approved training course and ~~have~~ taken an ungraded quiz at the conclusion of the course, ~~shall be issued a certificate by the department to purchase and use restricted use pesticides.~~ Passage of the required examination or attendance at a training course ~~shall qualify~~ certifies applicators for five consecutive years. ~~The~~ An applicator's first requalification and recertification date ~~will be based upon the staggered schedule established for the permit district in which the person resides.~~ is determined by the permit district in which the applicator resides.

(b) ~~The certificate shall be~~ A permit is in effect for five years from the date of issuance to December 31 of the fifth year except as provided in (1)(a). Farm applicators may renew their ~~certification~~ permit to purchase and use restricted use pesticides by submitting their application and fee to the department.

(c) The department designates ~~training manuals and/or training materials for farm applicators will be designated by the department.~~ If the applicator elects to qualify by examination, these training manuals and/or training materials ~~will~~ serve as the basis for the examination.

(2) The farm applicator examination or training standards, as a minimum requirement, ~~shall~~ must include those set forth in 80-8-209(3), MCA.

(3) The farm applicant passing the examination with a score of 70% or better or attending an approved training course ~~shall be certified~~ meets certification requirements and is eligible to apply for a permit to use restricted use pesticides for the purpose of producing agricultural commodities. ~~The passing examination score shall be 70%.~~

(4) Certified farm applicators ~~shall requalify for certification to use restricted use pesticides~~ must meet recertification requirements prior to ~~issuance of a certificate~~ renewing their permit. Requalification may be achieved by passing Farm applicators must pass an examination or by attending six hours of training approved by the department. Each farm applicator qualification period ~~shall~~ must conform to the established schedule as posted on the department's web site. ~~staggered system set forth in this rule. The qualification period of each district ends December 31 of the year indicated and every five years thereafter. A listing of counties within each district follows:~~

DISTRICT I	2013
Flathead	Missoula
Lake	Ravalli
Lincoln	Sanders
Mineral	
DISTRICT II	2009
Beaverhead	Lewis and Clark
Broadwater	Madison
Deer Lodge	Meagher
Gallatin	Park
Granite	Powell
Jefferson	Silver Bow
DISTRICT III	2010
Blaine	Liberty
Cascade	Pondera
Chouteau	Teton
Glacier	Toole
Hill	
DISTRICT IV	2011
Carter	Prairie
Custer	Richland
Daniels	Roosevelt
Dawson	Rosebud
Fallon	Sheridan
Garfield	Treasure
McCone	Valley
Phillips	Wibaux
Powder River	
DISTRICT V	2012
Big Horn	Petroleum
Carbon	Stillwater
Fergus	Sweet Grass

~~Golden Valley~~
~~Judith Basin~~
Musselshell

Wheatland
Yellowstone

AUTH: 80-8-105, MCA
IMP: 80-8-105, 80-8-209, MCA

REASON: The proposed change corrects terminology by changing certificate to permit. There is a certification process that results in the issuance of a permit, not a certificate. The rule maintains a schedule for recertification of private applicators, eliminates the requirement that it be a staggered system and removes the outdated recertification schedule. The department's web site maintains an updated private applicator recertification schedule. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with this rule change.

4.10.501 APPLICATION FOR LICENSE (1) A person applying for a ~~commercial pesticide dealer's license shall make application~~ must apply for the license on a standard application form provided by the department. ~~Each application shall be~~ Applicants must completed the application in its entirety and pay the licensing fee ~~paid prior to processing by the department. Incomplete applications will be returned to the applicant.~~ The department communicates application material deficiencies and identifies conditions and standards not met to applicants submitting incomplete applications or not meeting dealer licensing conditions and standards.

(2) Nonresident applicants ~~shall be required to~~ must submit the license application, fee, and a completed ~~form of service of process form~~ in the state prior to processing before the department processes the application ~~by the department.~~ The ~~form shall be accompanied by the~~ appropriate fee for filing, payable to the Secretary of State, must accompany the service of process form. The service of process shall remain valid until cancelled or modified.

(3) A nonresident corporation, ~~which has~~ with an effective certificate of authority to transact its business in Montana, filing ~~the service of process shall~~ must appoint its own resident agent or attorney upon whom the state makes service of process ~~may be made in such causes of action, and such service when so made shall be valid.~~ Valid service on the agent or attorney is required when making such service. Service of process for these corporations ~~shall apply~~ applies to all employees transacting business in the state. The corporation shall must provide to the department with a list of its employees, if more than one, ~~the~~ and any subsequent revisions of the list ~~for these of employees currently licensed as dealers and prospective dealer licensees or to be licensed as dealers.~~

(4) A nonresident individual or partnership may designate the Secretary of State as its lawful agent or attorney upon whom the state makes service of process ~~may be made in such causes of action, and such service when so made shall be~~

~~valid.~~ Valid service on the Secretary of State is required when making such service. Service of process for individuals or partnerships ~~shall apply~~ applies to all employees transacting business in the state. The individuals or partnership ~~shall~~ must provide to the department with a list and any subsequent revision of the list of the employees currently licensed as pesticide dealers. ~~and subsequent revision of the list for those employees licensed or to be licensed as pesticide dealers.~~

(5) A nonresident corporation which does not have an effective certificate of authority from the Secretary of State to transact its business in Montana and which does not transact business in Montana so as to require it to procure such a certificate of authority may designate the Secretary of State as its lawful agent or attorney upon whom the state makes service of process ~~may be made~~ in such causes of action, ~~and such service when so made shall be valid.~~ Valid service on the Secretary of State is required when making such service. Service of process for corporations ~~shall apply~~ applies to all employees transacting business in the state. The corporation ~~shall~~ must provide to the department with a list and any subsequent revisions of the list of its employees and subsequent revision of the list for those employees licensed as pesticide dealers or to be licensed as pesticide dealers prospective dealer licensees.

(6) Pesticide dealer outlets with a licensed dealer ~~shall be required to~~ must list the names and address of all ~~their employee~~ pesticide field men and salesmen employees employed ~~directly out of in~~ the same outlet as the licensed dealer. These employees traveling and transacting pesticide sales in the state ~~shall be required to~~ must possess and carry credentials stating that the employee is transacting business under the name and license number of a licensed dealer. The department ~~will provide the~~ issues necessary credentials to the licensed dealer for the field men and salesmen employees listed on the application. Dealers may request additional field men or salesmen employee credentials for new employees ~~provided that the dealers shall.~~ Dealers must return to the department any credentials for those employees terminated or no longer supervised by the dealer. Dealers and dealer field men or salesmen employees ~~shall be required~~ must, upon request, to show their license or license credentials to any buyer of a pesticide or to employees of the department.

AUTH: 80-8-105, MCA

IMP: 80-8-105, 80-8-207, MCA

REASON: The licensing process for a dealer is the same, regardless of the type of dealer license being sought. By eliminating the word "commercial," additional rules to cover government dealer licensing are not necessary. Issuance of credentials to new employees does not depend on the dealer returning credentials for employees no longer working under the dealer. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with these rule changes.

4.10.503 PESTICIDE DEALERS REQUIREMENTS AND STANDARDS

(1) Licensed pesticide dealers may purchase, sell, offer for sale, or distribute any pesticide classified as general or restricted use registered in that state. ~~Dealers will not be allowed to handle certain~~ except restricted pesticides which are registered only for use, sale, or distribution by government agencies ~~only~~.

(2) New applicants for a dealer license must pass a written examination prior to issuance of a license by the department. An applicant not receiving a passing score on the first examination ~~and upon notification of failure, may~~ must wait seven days to retake the examination ~~seven days after notification~~. Applicants failing the second examination ~~and upon notification of failure, may~~ must wait fifteen days to retake the examination ~~15 days after notification~~. Applicants failing the third examination ~~shall not be allowed to retake the examination~~ must wait until the next licensing period beginning January 1 of the next year to retake the examination. Applicants may ~~be reexamined~~ retake examinations at the department's Helena office or the applicant may make arrangements for reexamination at other locations in the state or in other states at the convenience and approval of the department.

(3) ~~Competency of applicants by written examination shall be determined by their knowledge of~~ Applicants must demonstrate competency in the subjects and materials set forth in the ~~{Pesticide Applicator Certification Core Manual}, (including future revisions)~~ and any other department-approved manuals, guides, or materials ~~required by the department~~. ~~The department derives~~ Examination questions will be derived from these manuals and bases. ~~Their~~ the question's degree of difficulty ~~will be based upon the~~ relative degree of importance ~~established by the department for~~ of the various subjects. The examination must consist of but is ~~not be~~ limited to questions on pesticide legislation; regulations and guidelines; safety and toxicology; disposal; storage and transportation; effects on animals, plants, and environment; fish and wildlife; alternatives to chemicals; pollinating insects; selection of control methods; factors affecting pesticide applications; classification and formulations of insecticides; fungicides, herbicides, and other pesticides and their uses; definitions; and recommendations for use of pesticides. The minimum passing examination score for dealer applicants ~~to be licensed as dealers shall be~~ is 80%.

(4) ~~Dealers shall be required to requalify~~ must recertify for licensing ~~prior to December 31, 1986, and by the end of every fourth year thereafter~~. ~~Dealers may~~ recertify ~~requalification must be accomplished by either passing a dealer examination or by attending 12 hours of training approved by the department~~. Fifty minutes of qualified training is eligible for one recertification credit. ~~The department assigns each training course meeting continuing education requirements as a minimum of one credit and a maximum of six credits. Courses must be either six, five, four, three, or two hours of training~~. A dealer attending pesticide training courses must have written verification of his/her attendance.

~~(a) Dealers licensed prior to April 30, 2010 who did not receive a score of 80% or higher on their core pesticide examination must retest or have obtained 12 hours of recertification training approved by the department before April 30, 2011.~~

(5) The department retains the right to approve or disapprove training courses relative to meeting ~~the qualifications for relicensing~~ recertification requirements. Training course sponsors must petition the department for approval

of their courses 30 days prior to being held the training event. The petition request must include:

(a) the training dates, time, and location(s); ~~projected attendance, speakers,~~
and

(b) registration information;

(c) start and end time of each presentation;

(d) synopsis of their each presentations; and

(e) the name, affiliation, and biography of each presenter.

(6) remains the same.

(7) A dealer, not renewing and maintaining his their license and qualification, recertification within the established qualification period ~~shall be required to~~ must retake and pass the examination prior to the issuance of a new license at the beginning of the next qualification certification period. The dealer may maintain his their qualifications by attending approved ~~requalification programs~~ recertification training for a time period not to exceed four years. The dealer ~~will be required to~~ must maintain his their records of requalification for submission to the department for relicensing. The department will not maintain qualification data for persons that have not relicensed. The department reserves the right to require special examination(s) on new requirements or technology.

(8) A licensed dealer changing his their employment to another company or business within a licensing period ~~shall be required to~~ must submit to the department the license and any employee credentials to the department for cancellation ~~by the department~~. ~~The dealer~~ Dealers that paid the license fee, by submission of a written request or application, may request the issuance of a new license. ~~If the dealer paid the license fee, the department will issue the license.~~ If a dealership or company originally employing the dealer paid the license fee, ~~the department shall not reissue the license to the dealer or the dealer's new employer.~~ If the company paid for the licensing fee, the department will credit the fee to the company for issuance of another dealer's license ~~by the department~~ within the same licensing period, provided that the license must not be issued until the applicant passes the Applicants must demonstrate they meet certification requirements, including any required written examinations or is already a licensed dealer before the department issues a license. Licenses and license fees ~~must not be~~ are not transferable between licensing periods.

~~(9) A licensed dealer or employees supervised by the dealer shall only sell restricted-use pesticides to other dealers, certified commercial, public utility, or governmental applicators, to noncommercial certified applicators, or to certified farm applicators or their credentialed family members or employees. The dealer or dealer's employees shall only sell to a certified applicator the pesticide or pesticides within the group or class of pesticides stated on the license or permit.~~

~~(10) Dealers are allowed to sell restricted-use pesticides to persons possessing proper identification or credentials issued by the department. These credentials will state that the person is purchasing the pesticide under the name and license or permit number of a certified applicator and that the certified applicator supervises the use of the pesticide by that person. Sale of restricted-use pesticides to any person other than certified applicators or persons with departmental~~

credentials is illegal. Such sales to any person must subject a dealer to immediate revocation of the license.

AUTH: 80-8-105, MCA

IMP: 80-8-105, 80-8-207, 80-8-208, MCA

REASON: The department proposes eliminating outdated compliance requirements for dealers. The proposed rule modifies credits for training courses, providing the opportunity to earn one recertification credit. The department proposes reducing the actual training time for each credit to 50 minutes, rather than 60 minutes, to more closely align with industry standards. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is not an economic impact associated with this proposed rule change.

4.10.701 GENERAL PESTICIDE REGISTRATION STANDARDS AND CLASSIFICATION (1) ~~The department hereby establishes the standards of restriction for pesticides to be registered, re-registered, sold, distributed, offered for sale, purchased, exchanged, bartered, given away, used, or applied in the state. Sections 80-8-201(3) and 80-8-105(2)(a), (b), and (3) of the Act allows the department to restrict pesticides to prevent damage or injury to:~~
~~(a) persons, animals, or pollinating insects from the effect of drift or from careless application;~~
~~(b) the environment;~~
~~(c) plants, including forage plants;~~
~~(d) wildlife; and~~
~~(e) fish and other aquatic life. These rules establish standards for requiring pesticides to be registered in the state, to be classified~~ The department classifies pesticides registered in Montana as either general use or restricted use. The department, upon receiving an application for state restriction of a federally registered pesticide product classified as or general or restricted use, pesticides must accept and register the pesticide and must use the same federal general or restricted use classification. by the department and prohibits the sale of restricted pesticides by any person to another person who has not been certified by the department to purchase, use, or apply the pesticide. It shall be unlawful to make available for use or to use any pesticide, whether registered or not, classified for restricted use to any person other than a certified applicator except as other exempted by the Act or rules adopted thereunder. Such registration and classification become effective upon issuance of a certificate for registration to the applicant. The department adopts the registration and labeling requirements as set forth in the Code of Federal Regulations, Title 40, parts 152 and 156.

(2) The department classifies a pesticide or one or more of its uses as general use if the pesticide, when applied in accordance with its directions for use, warnings and cautions and in accordance with widespread and commonly

recognized practice, does not generally cause unreasonable adverse effects on the environment.

(3) The department classifies a pesticide or one or more of its uses as restricted use if it is determined that without additional regulatory restrictions, the pesticide, when applied in accordance with its directions for use, warnings and cautions or in accordance with widespread and commonly recognized practice, may generally cause unreasonable adverse effects on:

(a) persons, animals, or pollinating insects from the effect of drift or from careless application;

(b) wildlife;

(c) fish and other aquatic life; and

(d) the environment.

(4) Restricted use pesticides require application only by or under the direct special supervision of a certified applicator. The department may also impose other restrictions, such as type of applicator who may use the pesticide or the time and place that the pesticides may be used. If the department establishes additional registration restrictions on a pesticide, the department must adopt such restrictions in administrative rule.

(5) All persons selling, distributing, offering for sale, exchanging, giving away, bartering, using, or applying pesticides must follow label directions and labeling requirements. Only persons certified by the department may purchase, use, and apply restricted use pesticides. It is unlawful to make a restricted use pesticide, whether registered or not, available for use to any person who is not a certified applicator except exempted in law or rules.

IMP: 80-8-105, MCA

AUTH: 80-8-105, MCA

REASON: The rule contains redundant language found in both ARM 4.10.702 and 80-8-105, MCA. The proposed change modifies the language to reduce redundancy and provide clear, logical content. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with this proposed rule change.

4.10.807 BURNING OR INCINERATION OF PESTICIDE CONTAINERS

(1) ~~Incineration~~ A person must not incinerate or burning pesticide containers or the use of an unapproved incinerator to burn or incinerate pesticide containers is prohibited except when such burning or incineration is unless approved by the Montana Department of Health and Environmental Sciences Quality (DEQ). Persons having DEQ approval to burn or incinerate pesticide containers must provide notice to the county prior to burning or incinerating any pesticide container(s).

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The rule updates the name of the state agency listed. The Department of Health and Environmental Sciences is now the Department of Environmental Quality (DEQ). The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

Economic Impact: There is no economic impact associated with this rule.

4.10.1004 OTHER PENALTIES (1) ~~If the nature of a particular enforcement proceeding so warrants, the~~ The department may, ~~in the interest of judicial economy,~~ combine an disciplinary enforcement proceeding under 80-8-211, MCA (suspension or revocation of licenses and permits) or other violations of the act or rules adopted thereunder with a proceeding under 80-8-306(5), MCA. However, any appeal from resulting disciplinary enforcement action against the license or permit or other violations, ~~shall be reviewed pursuant to~~ must comply with the procedure established by the Montana Administrative Procedure Act.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

REASON: The proposed change updates terminology used for rule. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

Economic Impact: There is no economic impact associated with the proposed rule change.

4.10.1009 NONCOMPLIANCE WITH PESTICIDE WORKER PROTECTION STANDARDS AND LABELING (1) For purposes of administering civil penalties for noncompliance with worker protection standards, the department ~~hereby~~ adopts the worker protection statements and worker protection standard as set forth in the Code of Federal Regulations, Title 40, part 156, subpart K and Title 40, part 170, ~~revised as of July 1, 1998. A copy can be obtained from the Montana Department of Agriculture, Agricultural Sciences Division, PO Box 200201, Helena, MT 59620-0201, (406 444-2944).~~

(2) A person's ~~F~~failure to comply with the worker protection standard and associated labeling requirements ~~is a violation~~ violates of the Montana Pesticides Act and is subject to civil penalties pursuant to 80-8-306, MCA.

(a) When a pesticide label references the worker protection standard ~~is referenced on a pesticide label pursuant to (40 CFR, Part 156, subpart K),~~ persons using the pesticide must comply with the worker protection statements and the worker protection standard. Failure to comply constitutes use of a pesticide in a manner inconsistent with the label.

(b) Any pesticide ~~that~~ is labeled for use in the production of agricultural plants on an agricultural establishment as defined in 40 CFR 170.3, ~~shall~~ must be labeled

with the worker protection statements set forth in 40 CFR Part 156, subpart K. A pesticide not so labeled is misbranded. It is a violation for any person to distribute, sell, or offer for sale or deliver for transportation or transport in intrastate commerce any misbranded pesticide ~~that is misbranded~~, and such violation is subject to a civil penalty pursuant to 80-8-306, MCA.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

REASON: The proposed rule updates the Code of Federal Regulations (CFR) reference adopted for worker protection. The department no longer maintains copies of CFR for distribution to the public. Readers may obtain access to CFR directly through EPA or by accessing the CFR online. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with this rule change.

4.10.1102 GENERAL SPILL CLEANUP, REPORTING, AND CONTAINMENT REQUIREMENTS (1) All persons ~~shall~~ must contain, confine, and clean up spills of pesticides or pesticide mixtures.

(a) An immediate response to pesticide spills ~~should be undertaken according to follow~~ local emergency operations plans; and responsible persons can, where appropriate, contact the local emergency operations jurisdiction or the state 24-hour number for ~~d~~Disaster and ~~e~~Emergency ~~s~~Services at (406)444-6911 324-4777.

(2) All persons ~~shall~~ must report to the department within 48 hours spills occurring as a result of their use of pesticides or spills of pesticides in facilities or from equipment under the control of that person.

(a) spills confined within secondary containment are exempt from the reporting requirement.

(b) spills of pesticides not exceeding an aggregate amount of 5 U.S. gallons or 100 U.S. dry pounds are exempt from reporting. The aggregate amount includes formulated product, diluent and other additives.

(c) the reporting requirements include, but are not limited to the following information:

(i) the specific location of the pesticide spill, including legal description, landmark references or address sufficient to allow. ~~The location shall be described in terms that are adequate for the department or emergency responders to locate the spill;~~

(ii) the manufacturer's name and complete trade name of the product or products spilled;

(iii) the amount of pesticide spilled; and

(iv) the name, address and telephone number of the person reporting the spill or the person who is the primary contact.

(3) ~~All persons must place~~ All pesticides or contaminated material recovered from a spill ~~shall be placed~~ in containers.

(a) the container(s) must have the following information on a label attached to the container:

(i) date of the recovered material was recovered placement into the container(s) occurred;

(ii) the active ingredient(s), trade name, and formulation;

(iii) ~~e~~Environmental ~~p~~Protection ~~a~~Agency registration number for each product;

(iv) signal word; and

(v) name, address and telephone number of the responsible person.

(b) contained materials must be stored, recycled, used or disposed of in accordance with label instructions, rinsing and disposing of pesticide containers as per ARM 4.10.801, and all state and federal disposal regulations.

~~(4) All persons not subject to ARM 4.10.1103 through 4.10.1109, constructing a mixing and loading or containment facility may follow the bulk pesticide containment rules or the guidelines in the publication "Designing Facilities for Pesticide and Fertilizer," David W. Kammel, MidWest Service, or similar construction guidelines.~~

(54) Persons using water to mix or load pesticides or to clean or rinse pesticide equipment or containers ~~shall~~ must use a backflow prevention device or procedures, such as an air gap or check valve, to prevent contamination of all water sources. Any person using a public water supply must comply with ARM 17.38.301 and 17.38.305.

(65) Any person that causes pesticide contamination of soil or water through faulty, careless or negligent mixing, loading, transferring, or storage of pesticides may be required by the department to construct containment for the control of pesticide spills. Implementation of this provision does not preclude the department from initiating other remedial or enforcement actions authorized by Title 80, chapter 8, MCA.

(76) Persons, whether licensed or not, who use or sell pesticides are responsible for remediating spills caused during their use or sale of pesticides or caused by persons under their supervision or employment.

(87) The department encourages all persons mixing, loading or transferring pesticides, and using or cleaning pesticide application equipment to have an emergency spill response plan as set forth in ARM 4.10.1108.

(98) Upon the written request by a person, the ~~Montana~~ department of agriculture may approve a deviation from this rule if the deviation maintains the intent of the rule. This request ~~shall~~ must describe the proposed deviation and reason for the deviation.

IMP: 80-8-105, MCA

AUTH: 80-8-105, MCA

REASON: The proposed rule updates the contact information for Disaster Emergency Services and eliminates outdated reference for containment guidelines.

The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with this rule change.

4.10.1103 GENERAL REQUIREMENTS AT PERMANENT STORAGE FACILITIES (1) Any person constructing or operating a new permanent storage facility (PSF) or making an addition to an existing PSF must comply with ARM 4.10.1101 through 4.10.1109.

~~(2) A person who operates a PSF prior to April 30, 2010, shall, within two years, bring their facility into compliance with ARM 4.10.1101 through 4.10.1109.~~

(32) Mobile containers such as railcars or tank trucks used to transfer pesticide to or from a PSF must use catch basins that may be temporary and portable, to recover spills from connections.

(43) Persons constructing PSFs must provide Pprotection against vandalism or unauthorized access shall be provided for at a PSF. and must close, lock, or otherwise secure primary containment ~~Valves on primary containment shall be closed, locked or otherwise secured when not in use.~~

(54) ~~Floor drains are not permitted in facilities~~ Facilities designed to contain spills of pesticide and pesticide mixtures must not contain floor drains unless:

(a) the entire system provides complete and reasonable access for routine inspections ~~is provided for the entire system.~~

(b) construction of all parts of the drain and its systems ~~are constructed occurs~~ above the normal ground plane of the immediate surrounding area.

(c) the floor drain ~~shall be~~ serves for recovery purposes only.

(d) sealing of noncompliant, existing secondary containment discharge outlets, valves, and gravity drains ~~on existing secondary containment that do not comply with this rule shall be sealed~~ occurred upon original adoption of these rules.

IMP: 80-8-105, MCA

AUTH: 80-8-105, MCA

REASON: Persons operating a permanent storage facility (PSF) prior to April 30, 2010 had two years to come into compliance with regulations. The department proposes eliminating the outdated compliance requirement. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with this rule change.

4.10.1104 PRIMARY CONTAINMENT STANDARDS FOR BULK PESTICIDES (1) Formulated bulk pesticides in undivided quantities of more than 500 U.S. gallons or 4,500 pounds, stored for more than 14 consecutive days, shall must be in primary containment meeting the following requirements:

- (a) primary containment and appurtenances shall must be constructed, installed, and maintained to prevent a spill of pesticide.
- (b) primary containment and appurtenances shall must be of materials which are resistant to corrosion, puncture, and cracking.
- (c) materials used in the construction or repair of primary containment and appurtenances ~~may not be of a type which~~ must not react chemically or electrolytically with stored pesticides in a way which may weaken the storage container or appurtenances, or create a risk of discharge.
- (d) materials used for valves, fittings, and repairs shall must be compatible with the materials used in the primary containment.
- (e) primary containment and appurtenances shall must handle all operation stresses, taking into account static head, pressure buildup from pumps and compressors, and any other mechanical stresses to which the primary containment and appurtenances may be subject in the foreseeable course of operations.
- (f) every primary containment connection, except a safety relief valve and conservation vent connection, shall must be equipped with a manual shut-off valve.
- (g) adequately supported appurtenances shall ~~be adequately supported to that~~ prevent sagging and possible breakage because of gravity and other forces encountered in the ordinary course of operation.
- (h) protection of primary containment and appurtenances shall ~~be protected~~ against reasonably foreseeable risks of damage by moving vehicles or objects.
- (i) primary containment, not in-service for longer than two years shall ~~be~~ requires thoroughly cleaned cleaning; securing of with all hatches, secured and all valves or connections secured. Vents shall be functional. valves, and connections; and vent functionality maintenance. Before placing back in service, the primary containment must pass A an integrity test shall ~~be performed before primary containment can be placed back in service.~~
- (j) anchored, secured, or elevated primary containment shall ~~be anchored or secured or elevated~~ to prevent instability or flotation as a result of liquid accumulations within the secondary containment.
- (k) primary containment may ~~not be filled beyond~~ contain quantities that exceed the designed capacity for which it is designed, taking into account the density of the liquid being stored and thermal expansion during storage.
- (l) primary containment retaining liquid shall ~~be equipped with~~ requires a liquid level gauging device capable of readily and safely determining by which the level of liquid in the storage container ~~can be readily and safely determined~~. A gauging device is not required if the liquid in the container can be measured safely by other means. Security of ~~the~~ gauging device shall ~~be secured to that~~ protects against breakage or vandalism ~~which may result~~ resulting in a discharge is required. External sight gauges must ~~be equipped with~~ have an automatic shut-off valve.
- (m) primary containment used for liquid pesticide shall ~~be equipped with~~ requires a conservation vent ~~which~~ equipment that opens and closes within the designed pressure limits of the container.
- (n) ~~All~~ primary containment shall ~~be~~ labeled in accordance with the labeling requirements set forth in the Code of Federal Regulations Title 40, parts 152 and 156 (July 1, 1996), which are hereby incorporated by reference. ~~Copies of 40 CFR, parts 152 and 156 are available upon request to the Montana Department of~~

~~Agriculture, P.O. Box 200201, Helena, MT 59620-0201. Attach a complete and legible The registered product label shall be attached to primary containment in a prominent location. The label shall be complete and legible.~~

IMP: 80-8-105, MCA
AUTH: 80-8-105, MCA

REASON: The proposed amendment corrects reference to Code of Federal Regulations (CFR). The most up to date version of CFR is available online and the department does not have publicly available paper copies of CFR. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with this rule change.

4.10.1201 GENERAL (1) The department hereby establishes rules regarding the registration and restricted use of 1080 ~~livestock p~~Protection ~~e~~Collars ~~hereafter referred to as~~ [collar(s)] to control coyotes (*Canis latrans*) that depredate ~~sheep and goats~~ livestock.

(2) Registrants of the collar, dealers selling the collar, and applicators using the collar, ~~shall be~~ are subject to future labeling restrictions and requirements as may be prescribed from time to time by the agency and/or the department.

IMP: 80-8-105, MCA
AUTH: 80-8-105, MCA

REASON: The proposed rule provides updated language. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with this rule change.

4.10.1204 APPLICATOR CLASSIFICATIONS AND REQUIREMENTS

(1) Individuals who desire to use 1080 collars ~~shall have to be qualified~~ must meet certification requirements and become certified as either a certified-licensed commercial or government applicator or a permitted farm applicator. All individuals desiring ~~to become certified shall be required to~~ certification must attend a training course sponsored or approved by the department and pass an examination.

(2) The training course ~~shall~~ must include, but is not limited to:

- (a) ~~T~~training in the safe handling and attachment of collars.
- (b) ~~T~~training in disposal of punctured or leaking collars, contaminated animal remains, contaminated vegetation and soil, and contaminated clothing.
- (c) ~~I~~nstructions for practical treatment of 1080 poisoning in humans and domestic animals.
- (d) ~~I~~nstructions on record keeping.

(e) ~~F~~familiarization with Montana pesticide laws and rules.

(f) ~~F~~familiarization with collar labeling.

(3) Individuals desiring to become certified ~~shall be required to~~ must pass a written and practical examination based on materials and training provided by the department. Applicants for a certified-license must pass the examination with a minimum score of ~~eighty percent (80%)~~, and applicants for a farm applicator special use permit must pass with a minimum score of ~~seventy percent (70%)~~. Applicants failing the examination the first time ~~shall not be allowed to~~ may retake the examination ~~for seven (7) days after notification~~. Applicants failing the examination a second time may retake the examination ~~fifteen (15) days after notification by certified mail~~. Applicants failing the examination a third time ~~shall not be allowed to~~ may not retake the examination until the next licensing period beginning January 1 of the next year and shall must attend another approved training course. Applicants may retake the E~~examinations may be retaken~~ at any reasonable time after the time limitations expressed for the first and second examinations at the department's Helena office, or the applicant may make arrangements for examination or reexamination at other locations in the state at the convenience and approval of the department.

(4) Applicators maintaining their license for four consecutive licensing periods ~~shall be required to~~ must requalify for licensing prior to every fifth licensing period. ~~Applicator requalification shall be accomplished by~~ recertification means passing an examination or ~~by attending an acceptable applicator training courses~~ approved by the department. ~~An applicator requalifying for licensing by attending a pesticide training course shall be required to have the government agency sponsor of the training course submit to the department a written verification of the applicator's attendance and an agenda of topics and speakers~~ Government agency sponsors must submit written applicator attendance verification along with the agenda of topics and speakers before an applicator receives recertification training credit. The standards for ~~requalification shall~~ recertification must be the same as those required for initial certification. The department retains the right to approve or disapprove such training courses relative to meeting the qualification for relicensing. The department may also require applicators to pass an examination and/or attend training during any licensing period on new major pesticide technology which applies to the applicator's classification.

(5) ~~All~~ The department will certify individuals ~~who have that~~ attended a training course and ~~having~~ passed the written examination on the use of the collars; ~~will be certified~~ under one of the following classifications:

(a) certified-licensed government applicator - regulatory pest control-predator - livestock protection collar;

(b) certified-licensed commercial applicator - agricultural pest control - vertebrate - livestock protection collar;

(c) permitted or certified farm applicator-livestock protection collar.

(6) Applicants desiring certification for use of collars and individuals certified to use the collars ~~shall have to~~ must meet and comply with other applicable licensing requirements as established by departmental rules.

(7) Livestock ~~p~~Protection ~~c~~Collar applicators ~~shall~~ must have in their possession the "Technical Bulletin for the Livestock Protection ~~e~~Collar" and must

use collars in accordance with Section 3 (Use Restrictions) and Section 4 (Supervision, Inspection of 1080 Livestock Protection Collars). The "Technical Bulletin for the Livestock Protection Collar" ~~by the Montana department of agriculture and Montana department of livestock effective as of February 23, 1996, contains~~ containing the use restrictions that applicators must be followed during application of the livestock protection collars and is available from the Montana Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 (406) ~~444-2944~~ or the Montana Department of Livestock, P.O. Box 202001, Helena, MT 59620-2001 (406) ~~444-2023~~ agr@mt.gov or 444-5400.

IMP: 80-8-105, MCA
AUTH: 80-8-105, MCA

REASON: To ensure that 1080 collars are safely and correctly used, a practical examination is included as a requirement. The change reflects the current department practice used for this category. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with this rule change.

4.10.1803 STANDARDS FOR WASTE PESTICIDE DISPOSAL PROGRAM OPERATION

(1) The waste pesticide disposal program may accept:

- (a) acceptable pesticides;
- (b) non-plastic recyclable pesticide containers; such as containers made of recyclable materials like metal, fiberboard, or other similar material; and
- (c) exchangeable pesticides.

(2) The disposal program ~~shall~~ does not accept:

- (a) nonpesticide materials; or
- (b) unacceptable pesticides.

(3) Contractors conducting the disposal program must meet qualifications that include but are not limited to the following items:

(a) registered as a hazardous waste generator with the Montana ~~d~~Department of ~~e~~Environmental Quality (DEQ) and possess a hazardous waste identification number issued by the United States ~~e~~Environmental ~~p~~rotection ~~a~~Agency (EPA). DEQ registration and an EPA hazardous waste identification number ~~shall not be~~ is not required for a contractor involved solely with recyclable pesticide containers and exchangeable pesticides;

(b) possess or subcontract only with transporters that possess all necessary federal and state permits, licenses and registrations required for the transportation of hazardous wastes; and

(c) certify that employees conducting the disposal program meet occupational safety and health administration safety and training requirements in the ~~e~~Code of ~~f~~Federal ~~r~~egulations (29 CFR 1910.120).

(4) The department may issue ~~r~~Request for ~~bid~~ ~~p~~roposals (RFPs) and enter into written contracts with contractors to conduct the operational aspects of the

disposal program. The department may require that entities responding to the RFP provide specific information on methods and procedures that the contractors will use in conducting a disposal program. This information provided by the contractor may include but is not limited to:

- (a) and (b) remain the same.
- (c) provisions for development of site specific health and safety plan(s) for the chosen collection site(s);
- (d) through (f) remain the same.
- (g) attendance at organizational meeting(s) prior to collection day(s); and
- (h) provisions for written documentation of collection activities provided to the department within established time schedules which may include:
 - (i) an itemized list of pesticide products by trade/generic name and amounts collected;
 - (ii) shipping manifests.
- (5) The department shall must establish criteria for awarding the disposal program contract(s). Selection criteria shall must include but not be limited to:
 - (a) ability to perform service;
 - (b) related experience or similar waste disposal projects;
 - (c) references;
 - (d) federal Resource Conservation and Recovery Act (RCRA) compliance record;
 - (e) clarity and completeness of bid proposal; and
 - (f) cost.

IMP: 80-8-105, MCA

AUTH: 80-8-111, 80-8-112, MCA

REASON: The department would like to create separate rule sections for waste disposal, pesticide container recycling, and exchangeable pesticides. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana requirements.

ECONOMIC IMPACT: There is no economic impact associated with this rule change.

4.10.1804 DISPOSAL PROGRAM OPERATION (1) The department or its designated agent may conduct outreach and educational activities to inform the public about the functions of the disposal program and may conduct these activities in cooperation with the Montana ~~s~~State ~~u~~University extension service, local governments, the contractor(s), and others.

(2) remains the same.

(3) The department selects ~~C~~collection site(s) ~~shall be selected by in consultation with~~ the contractor.

(4) The department in consultation with the contractor ~~will~~ may establish minimum criteria for a site to qualify as a collection site.

(5) The department establishes the following procedures for disposal of acceptable pesticides.

(a) Persons intending to participate in the disposal program must make application to the department or the department designee on forms provided by the department. Information provided on the form must include but is not limited to:

- (i) brand name of the pesticide if present on label or known;
- (ii) active ingredient of the pesticide if present on label or known;
- (iii) EPA registration number or the United States ~~d~~Department of ~~a~~Agriculture (USDA) registration number, if present on the label or known;
- (iv) quantity of each pesticide;
- (v) container size, composition, condition; and
- (vi) applicant's name, address, and telephone number.

(b) Persons who submit applications to the program must receive ~~written~~ approval from the department or the department designee to participate in the program.

(c) The department will provide the participant with a list of pesticides for disposal ~~Prior to the collection day, the department shall provide the participant with a form listing the acceptable pesticides approved for disposal.~~ This form will serve as a bill of lading and must be in the possession of the participant during transport of the acceptable pesticides to the collection site. ~~This form will also serve~~ to transfer ownership of the pesticide(s) from the participant to the contractor by a pesticide product release statement on the form.

(d) Participants in the disposal program must transport acceptable pesticide products to the collection site according to the Montana Pesticides Act and United States ~~d~~Department of ~~t~~Transportation regulations.

(e) A participant may assign a designee to transport the participant's acceptable pesticides to the collection site only if ~~the designee is~~ approved by the department during preregistration.

(f) Ownership of acceptable pesticides approved for disposal ~~will be transferred~~ transfers from the participant to the contractor at the collection site.

(6) The department establishes the following procedures for ~~recycling~~ disposal of pesticide containers which cannot be recycled.

(a) The waste disposal program accepts pesticide containers made of metal, fiberboard, or similar materials but not plastic pesticide containers suitable for recycling. Persons intending to participate in the disposal program for the purpose of ~~recycling~~ disposing of pesticide containers not acceptable for recycling must make application to the department on forms provided by the department. Information provided on the form must include ~~but may not be limited to:~~

- (i) brand name of the pesticide if present on label or known;
- (ii) active ingredient of the pesticide if present on label or known;
- (iii) EPA registration number or United States ~~d~~Department of ~~a~~Agriculture registration number, if present on the label or known;
- (iv) ~~number and size of each pesticide container~~ and quantity to be disposed of;
- (v) container's composition;
- (vi) applicant's name, address and telephone number; and
- (vii) other information deemed necessary by the department or disposal contractor.

(7) The following procedures apply to pesticide containers recycled in the waste pesticide program:

~~(ba) Rinsing of Recyclable pesticide containers must be rinsed according to label directions as addressed in the code of federal regulations (40 CFR 156.10) is required.~~

~~(cb) The contractor department or its designee shall inspects each container and rejects containers with visible residue. The contractor must not accept any container that in the judgement of the contractor has any visible residue.~~

~~(d) A form completed by the department following review of the participant's application will list containers approved for recycling under the disposal program. A copy of this form will be returned to the participant and must be in the participant's possession during transport of the containers to the collection site and must be provided to the contractor at the collection site.~~

~~(7) The department establishes the following procedures for the exchange of exchangeable pesticides:~~

~~(a) a pesticide may be exchanged or transferred from one person to another for the purpose of using the pesticide according to label directions. The pesticide offered for exchange must be:~~

~~(i) registered or meet provisions of 80-8-201(9)(a) or (b), MCA; and~~

~~(ii) in the original, labeled, unopened sealed container.~~

~~(b) owners of exchangeable pesticides must apply to the department or department designee and provide information on a department form according to ARM 4.10.1804(5)(a);~~

~~(c) persons wanting to receive exchangeable pesticides must provide their name, address, telephone number and pesticides wanted to the department. Persons wanting pesticides classified as restricted use must be licensed to use restricted use pesticides by the department;~~

~~(d) the department or department designee will match donors to users;~~

~~(e) transfer of ownership of exchangeable pesticides may occur during scheduled pesticide disposal collections or through other arrangements approved by the department.~~

~~(f) the department may require the pesticide offered for exchange to be analyzed for label claim.~~

AUTH: 80-8-105, MCA

IMP: 80-8-111, 80-8-112, MCA

REASON: The proposed change organizes the waste pesticide program rule for clarity and updates processes and procedures used in the program. The department proposes a distinct section of rule related to exchangeable pesticides later in these proposed rules. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

ECONOMIC IMPACT: There is no economic impact associated with this rule change.

4.10.1806 FEES ~~(1)~~ Participants in the disposal program may be required to pay a fee commensurate with department program costs. The fee will be set by the director annually by June 30, and will not exceed \$2 per pound.

(1) There is no fee for the first 200 pounds of waste pesticide disposal. The fee for each pound of waste pesticide disposal over 200 pounds is \$0.50.

~~(2)~~ Participants who submit recyclable pesticide containers to the program may be required to pay a fee commensurate with department program costs for recycling. The fee will be set by the director annually by June 30, and will not exceed 50 cents per pound.

(3) Fees for pesticide disposal and plastic container recycling may exceed the fees set in ~~(1) and (2)~~ for pesticides or containers that have handling and/or disposal requirements resulting in costs exceeding the fees set under ~~(1) and (2)~~. The fee for these pesticides or containers will not exceed the cost of disposal or recycling.

(4) The department may charge participants who receive an exchangeable pesticide under ARM 4.10.1804(7) shall pay a fee of \$5 for each container with a net content of less than or equal to one gallon or ten pounds and \$10 for each container with a net content of greater than one gallon or ten pounds. The department, at its discretion, may lower the fees charged to participants who receive exchangeable pesticides can be lowered at the discretion of the department if the established fee is higher than the retail value of the exchangeable pesticide.

(5) Applicators licensed by the department shall be given receive a monetary credit if they are a participant participate in the disposal program. The credit must be used The department must apply the credit of applicators participating in the waste pesticide disposal program during the certification period for farm applicators or the licensing period for dealers, commercial applicators, commercial operators, and government applicators in which the fee is paid;

(a) farm applicators shall must receive a one-time credit of \$15 during the farm applicator's certification period.

(b) commercial applicators shall must receive an annual credit of \$10 for each licensing period that the applicator is licensed. Commercial applicators shall must receive an annual credit of \$15 for the first two commercial operators operating under their license for each licensing period the operator is licensed. A The department must give an additional credit of \$5 shall be received for each additional commercial operator operating under the applicator's license for each licensing period the operator is licensed;

(c) government agencies shall must receive an annual credit of \$10 for each licensing period that each applicator is licensed for the first four licensed applicators. A The department must give an additional credit of \$10 shall be received for each additional applicator for each licensing period that the applicator is licensed. The total credit must not exceed \$280; and

(d) dealers shall must receive an annual credit of \$10 for each licensing period that the dealer is licensed.

AUTH: 80-8-105, MCA
IMP: 80-8-111, 80-8-112, MCA

REASON: While the department does facilitate pesticide exchanges, it does so infrequently. At this time, the department does not need to charge for facilitation services. The fee section for waste pesticide disposal and container recycling should list the fee rather than saying "the fee may not exceed" a certain amount. The proposed rule also makes other grammar and formatting changes to comply with Secretary of State (SOS) Administrative Rules of Montana (ARM) requirements.

5. The department proposes to repeal the following rules:

4.10.702 REGISTRATION REQUIREMENTS

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

4.10.709 USE OF PESTICIDES ON PEST INFESTATIONS IN ALFALFA SEED CROPS

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

4.10.1801 GENERAL

AUTH: 80-8-105, MCA

IMP: 80-8-111, 80-8-112, MCA

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, 302 N. Roberts, P.O. Box 200201, Helena, Montana, 59601; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., January 9, 2017.

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

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

9. 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.

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

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

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Agriculture

Certified to the Secretary of State November 28, 2016.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 8.22.2702, 8.22.2811,	)	AMENDMENT
8.22.2905, 8.22.3003, 8.22.3201,)	
8.22.3202, 8.22.3807, pertaining to	)	NO PUBLIC HEARING
the Board of Horse Racing	)	CONTEMPLATED

TO: All Concerned Persons

1. On January 8, 2017, the Department of Commerce proposes to amend the above-stated rules.

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. on January 3, 2017, to advise us of the nature of the accommodation that you need. Please contact Bonnie J. Martello, Paralegal, Montana Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; fax (406) 841-2701; TDD (406) 841-2702; or e-mail bmartello@mt.gov.

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

8.22.2702 ANNUAL LICENSE FEES (1) through (11) remain the same.

- (12) Occupational
- (a) Veterinarian practicing \$50
- (b) Plater 35
- (c) Announcer 25
- (d) Exercise person 30
- (e) Groom 25
- (f) Valet 25
- (g) Photo manager 25
- (h) Outrider 25
- (i) Pony person 25
- (j) Tip sheet seller 25
- (k) Photo company ~~800~~ 180
- (l) Gate attendant 25
- (m) Photo employee 25
- (n) Security staff 25
- (o) Starter assistant 25
- (p) Veterinarian assistant 25
- (q) Others not listed 25
- (r) Track maintenance 25
- (s) Spouse/family 25

(t) Director of simulcast network	40
(u) Director at simulcast facility	40
(v) Chart company employee	25
(w) Simulcast site or network license	40
(x) Lessor	50
<u>(y) Program company</u>	<u>125</u>

(13) through (15) remain the same.

AUTH: 23-4-104, 23-4-201, 37-1-134, MCA

IMP: 23-4-104, 23-4-201, 37-1-134, MCA

REASON: The photo company fee was originally put into place when there were 120 days of racing. The fee today is excessive. In regards to the program company, this license requires companies that want to do business at the track producing information for the patrons, to be licensed.

8.22.2811 VETERINARIAN: OFFICIAL (1) through (4) remain the same.

~~(5) The official veterinarian shall administer medication only in an emergency and if no practicing veterinarian is available.~~

AUTH: 23-4-202, MCA

IMP: 23-4-201, MCA

REASON: Due to the small number of race days, the board determined the official veterinarian should be allowed to also administer medications.

8.22.2905 JOCKEYS (1) through (3)(a) remain the same.

(b) If the applicant is 16 or 17 years old, a signature from his/her parent or legal guardian must accompany the application.

(4) through (38) remain the same.

(39) Each jockey shall weigh in at the same weight as that at which the jockey weighted out, and if short of it by more than two pounds, the jockey shall be fined or suspended or ruled off at the discretion of the stewards, and the jockey's mount shall may be disqualified.

(40) through (43) remain the same.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-104, 23-4-201, MCA

REASON: The board currently requires 16 and 17 year olds to obtain a parent or legal guardian's permission to get an apprentice jockey license, so adding it to a regular jockey's license was needed. ARM 8.22.2905(39) gives the authority to disqualify a mount to the track stewards based on multiple elements.

8.22.3003 DECLARATIONS AND SCRATCHES (1) through (8) remain the same.

(9) Any horse which has qualified or drawn into a stakes race, other than an overnight stakes race, can be scratched from that stakes race for any reason prior to the start of the race. The scratch of a horse from a stake race is irrevocable.

AUTH: 23-4-202, MCA
IMP: 23-4-104, MCA

REASON: This rule matches other racing jurisdictions' rules in regards to stakes race scratches.

8.22.3201 GENERAL RULES (1) remains the same.

(2) All horses entered in races held under these rules may be subject to inspection by the track veterinarian at any time before or after a race. After each race whenever possible a urine and/or post-race serum or plasma sample shall be collected from each winning horse and such other horses as may be designated by the stewards. Such samples shall be designated as official samples and they shall be sealed in the presence of the trainer or his or her authorized representative and an official receipt signed by such person to indicate that the sample is a true and prompt sample from the horse in question shall be given.

(3) through (19) remain the same.

AUTH: 23-4-104, 23-4-202, 37-1-131, MCA
IMP: 23-4-104, 23-4-202, MCA

REASON: This proposed rule clarifies the use of urine and/or plasma in testing of animals.

8.22.3202 PERMISSIBLE MEDICATION (1) through (3) remain the same.

~~(4) Phenylbutazone, or derivatives thereof, shall be administered in such dosage amount that the test sample shall contain not more than five micrograms of the drug substance, its metabolites and analogs, per milliliter of blood plasma. No urine sample taken from a horse authorized to use phenylbutazone shall exceed 165 micrograms total of phenylbutazone or its metabolites per milliliter of urine.~~ Phenylbutazone shall be administered in a dosage amount such that concentrations shall not exceed 2 micrograms per milliliter of post-race serum or plasma.

~~(5) Race day medication is allowed in the treatment of exercise induced pulmonary hemorrhage. Up to 250 mg. of furosemide (five cc Lasix) IV is permitted up to four hours before race time.~~ Race day medication is allowed in treatment of EIPH (exercise induced pulmonary hemorrhage). Up to 250 mg (5cc or 50 md/ml) furosemide (Lasix) IV is permitted up to four hours before race time. A horse racing with furosemide must show a detectable concentration of the drug in the post-race serum or plasma, not to exceed 100 nanograms per milliliter.

(6) through (18) remain the same.

AUTH: 23-4-104, 23-4-202, MCA
IMP: 23-4-104, MCA

REASON: This rule is being amended to match the same standards being used in other racing jurisdictions when it comes to dosage amounts.

8.22.3807 ADVANCE DEPOSIT ACCOUNT WAFERING FEES ~~(1) A nonrefundable application fee of \$1000 must be submitted with all hub operator license applications to conduct advance deposit account wagering.~~

~~(2) The hub operator applicant will be billed and shall be responsible for any costs involved in background checks, investigation, and review of the application in excess of \$100.~~

~~(3) An annual license fee of \$500 shall be payable to the board on issuance of the original hub operator license, which fee shall not be prorated to the license issuance date.~~

~~(4) (1) An annual hub operator license renewal fee of \$500 shall be paid by the licensee, and is due thirty days prior to the license expiration date.~~

~~(5) (2) The hub operator licensee will be billed and shall be responsible for any costs involved in background checks, investigation, and review of the annual renewal application in excess of \$100.~~

AUTH: 23-4-202, MCA

IMP: 23-4-101, 23-4-301, MCA

REASON: This rule is being amended to remove duplicate rules.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; fax (406) 841-2701; TDD (406) 841-2702; or e-mail bmartello@mt.gov, and must be received no later than 5:00 p.m., January 6, 2017.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Bonnie Martello at the above address no later than 5:00 p.m., January 6, 2017.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 35 persons based on 370 to 400 licenses issued per year.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

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

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Marty Tuttle
Marty Tuttle
Rule Reviewer

/s/ Douglas Mitchell
Douglas Mitchell
Deputy Director
Department of Commerce

Certified to the Secretary of State November 28, 2016.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through XIII pertaining to) PROPOSED ADOPTION
Ignition Interlock Devices)

TO: All Concerned Persons

1. On January 18, 2017, at 10:00 a.m., the Department of Justice will hold a public hearing in the Scott Hart Building Auditorium, 302 North Roberts Street, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Justice no later than 5:00 p.m. on January 9, 2017, to advise us of the nature of the accommodation that you need. Please contact John Paveo, Department of Administration, Human Resources Policy & Program Bureau, State Diversity Program Coordinator, P.O. Box 200127, Helena, Montana, 59620-0127; telephone (406) 444-3984; fax (406) 444-0703; or e-mail jpaveo@mt.gov.

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

NEW RULE I IGNITION INTERLOCK DEVICE CERTIFICATION (1) The Motor Vehicle Division Administrator or designee must issue a certification of an ignition interlock device (IID) before that device is authorized to be installed pursuant to Montana Code Annotated and the Administrative Rules of Montana.

AUTH: 61-8-441, MCA
IMP: 61-8-441, MCA

NEW RULE II MANDATORY REQUIREMENTS FOR AN IGNITION INTERLOCK DEVICE An IID must meet the following requirements before it may be certified:

- (1) Comply with all applicable standards set under the Model Specifications of the National Highway Traffic Safety Administration, Montana Code Annotated, and ARM Title 23.
- (2) Be installed in such a manner that it will not interfere with the normal operation of the vehicle after it has been started.
- (3) Work accurately and reliably in an unsupervised environment and under extreme weather conditions.
- (4) Require a deep lung breath sample or use an equally accurate measure of blood alcohol concentration equivalence. This requirement is met if the IID allows a minimum of 1500 ml or 1.5 L of breath for an acceptable breath sample.
- (5) Resist tampering and show evidence if tampering is attempted.
- (6) Be difficult to tamper with or circumvent. This may be shown by:

- (a) using special locks, seals, and installation procedures that prevent or record evidence of tampering and/or circumvention attempts;
- (b) breath anti-circumvention features such as alternating breath flow, hum tone, breath temperature and any other Motor Vehicle Division-approved anti-circumvention features must be activated during all start up and random breath tests;
- (c) changes in software and IID configuration, including anti-circumvention features and the State of Montana configuration profile must only be administered by the manufacturer.
- (7) Minimize inconvenience of a sober driver.
- (8) Operate reliably over the range of vehicle environments.
- (9) The manufacturer must be adequately insured for product liability.
- (10) Include a minimum supply of two disposable mouth pieces upon installation, designed to minimize the introduction of saliva into an IID, and an additional mouth piece with every calibration period.
- (11) Automatically and completely purge residual alcohol before allowing subsequent tests.
- (12) Be designed to permit a restart without testing within two minutes of a stall of when the ignition has been turned off, except a restart will not be permitted during a violation reset.
- (13) Once there is a failed start attempt, require an increasing wait period for subsequent attempts to initially start the vehicle. The device must be capable of notifying the driver of this time period. Acceptable forms of notification are use of an indicator light, audible tone, voice modulation, and/or count down timer.
- (14) Enter into a violation mode occurs when the driver has:
 - (a) failed an initial start attempt four times within any two-hour period;
 - (b) disconnected the control head after start up;
 - (c) tampered with the IID device;
 - (d) failed to have the IID serviced within the time period described in this chapter.
- (15) Within five days of a violation mode, the restricted driver must service the vehicle where it must be calibrated, downloaded, and fully inspected.
- (16) Uniquely identify and record each time the vehicle is attempted to be started and/or started, the results of all tests, retests, or failures as either being a malfunction of the device or from the driver not meeting the requirements, how long the vehicle was operated, any indication of bypassing or tampering with the IID, and whether the device entered into a violation mode.

AUTH: 61-8-441, MCA
IMP: 61-8-441, MCA

NEW RULE III APPLICATION FOR CERTIFICATION FOR AN IGNITION IINTERLOCK DEVICE (1) A manufacturer must submit an application to the Motor Vehicle Division requesting a letter of certification for an IID. On a case-by-case basis, the Motor Vehicle Division may accept an application submitted by a vendor.

- (2) The manufacturer or vendor must:
 - (a) complete the application for certification for an IID;

- (b) give the manufacturer name, physical, mailing, and e-mail addresses, and phone number;
- (c) if applicable, give the vendor's name, physical, mailing, and e-mail addresses, and phone number;
- (d) give the manufacturer and, if applicable, the vendor's representative's name, physical, mailing, and e-mail addresses, and phone number. The representative is the employee designated to act on behalf of and/or represent the applicant in all matters relating to the IID certification process, compliance, and reporting requirements with the State of Montana;
- (e) give a detailed description of the IID, including the instruction, installation, and troubleshooting manuals;
- (f) give written verification that the IID complies with all applicable standards set under the Model Specifications of the National Highway Traffic Safety Administration, Montana Code Annotated, and ARM Title 23, including [New Rule II];
- (g) give a statement that:
 - (i) the applicant and their employees will cooperate with the Motor Vehicle Division at all times, including its inspection of the manufacturer or vendor's installation, service, repair, calibration, use, removal, or performance of IID;
 - (ii) the applicant agrees to give all downloaded IID data, reports, and information related to the IID to the Motor Vehicle Division in an approved electronic format;
 - (iii) the applicant or their employees agree to give testimony relating to any aspect of the installation, service, repair, calibration, use, removal, or performance of the ignition interlock at no cost on behalf of the State of Montana or any other political subdivision;
- (h) give the IID configuration profile;
- (i) submit a report from an International Organization For Standardization certified testing laboratory documenting:
 - (i) the test results of the IID;
 - (ii) the test results must be dated on or after May 8, 2014;
 - (iii) the manufacturing date of the IID test samples;
 - (iv) the serial numbers and firmware and software versions of the devices tested;
- (v) all technical specifications describing the accuracy and reliability of the device;
- (vi) the test results must verify that the proposed IID meets or exceeds the model specifications of the National Highway Traffic Safety Administration and any additional requirements established by the State of Montana;
- (vii) authorizing signatures, and attestation by the corporate officers of the independent laboratory indicating the accuracy of the reported results;
- (j) the applicant must give certification that the proposed IIDs are manufactured in a facility that is ISO 9001 and ISO 14001 Quality Management Systems accredited;
- (k) the applicant must bear all costs associated with the laboratory analysis and required reporting;
- (l) if specifically requested by the Motor Vehicle Division, give two IIDs for field and laboratory testing;

(m) give the alcohol reference value and type of calibration device used to check the IID.

AUTH: 61-8-441, MCA

IMP: 61-8-441, MCA

NEW RULE IV RENEWAL OF AN IGNITION INTERLOCK CERTIFICATION

(1) A manufacturer must submit a written request to renew an IID certification to the Motor Vehicle Division no earlier than 90 days prior to and no later than 60 days prior to the expiration of the IID certification. On a case-by-case basis, the Motor Vehicle Division may accept an application for renewal submitted by a vendor.

(2) An applicant requesting a renewal for an IID certification must:

(a) submit the completed Motor Vehicle Division application for renewal of IID certification; and

(b) comply with all requirements detailed in [New Rule III].

AUTH: 61-8-441, MCA

IMP: 61-8-441, MCA

NEW RULE V MANUFACTURER OR VENDOR CERTIFICATION AND INSPECTION

(1) A manufacturer or vendor must submit an application to the Motor Vehicle Division requesting a letter of manufacturer or vendor certification to repair, install, remove, or service a certified IID.

(2) The manufacturer or vendor must:

(a) complete the Motor Vehicle Division application form;

(b) give the manufacturer or vendor's name, physical, mailing, and e-mail addresses, and phone number;

(c) give the manufacturer or vendor's representative name, physical, mailing, and e-mail addresses, and phone number. The manufacturer representative is the manufacturer or vendor's employee designated to act on behalf of and/or represent the manufacturer in all matters relating to the interlock certification process with the State of Montana;

(d) give the manufacturer or vendor's liaison's name, physical, mailing, and e-mail addresses, and phone number. The manufacturer's liaison is the manufacturer or vendor's employee designated to act on behalf of and/or represent the manufacturer in all matters relating to repair, installation, and removal of IIDs;

(e) give a written statement from the manufacturer that authorizes the vendor to install the manufacturer's certified IID;

(f) give a certificate of insurance showing that they have adequate liability insurance;

(g) certify that each lease agreement for an IID:

(i) gives a warning that a person who knowingly tampers with, circumvents, or otherwise misuses the IID is subject to criminal prosecution;

(ii) states all fees and rates a lessee may be charged to install, remove, repair, or service an IID;

(iii) gives lessees a statement of charges clearly specifying warranty details, monthly lease amount, any additional charges anticipated for routine calibration and service checks and what items, if any, are given without charge; and

(iv) gives the lessee written notice of any changes in the statement of charges regardless of what person or agency requested the change, prior to the implementation of such changes.

(h) give a certification that the manufacturer or vendor services the entire State of Montana with a service center within 100 miles of any individual who must have an IID installed. If a manufacturer or vendor cannot give a fixed location for the 100-mile requirement, then a detailed statement on how the manufacturer or vendor gives service to all of the State of Montana. A manufacturer or vendor may request a waiver of this requirement due to hardship;

(i) give a written statement describing the calibration procedures and the interval the restricted driver must submit the IID for calibration and inspection;

(j) attach to the application a list of all service centers, including:

(i) the physical, mailing, and e-mail addresses, and phone numbers of each service center;

(ii) the service center's hours of operation;

(iii) the type of the certified IID serviced;

(iv) the type of calibration device used for the serviced IID;

(v) a copy of IID data reader download procedures; and

(vi) a list of all fees that may be charged to the lessee to install the manufacturer's certified IID.

AUTH: 61-8-441, MCA

IMP: 61-8-441, MCA

NEW RULE VI MANUFACTURER, VENDOR, AND SERVICE CENTER INSPECTION (1) A vendor or manufacturer must agree to allow access for Motor Vehicle Division employees or their designee to conduct an inspection of the manufacturer, vendor, or service center at any time during scheduled business hours to ensure compliance.

AUTH: 61-8-441, MCA

IMP: 61-8-441, MCA

NEW RULE VII MOTOR VEHICLE DIVISION ISSUANCE OR RENEWAL OF CERTIFICATION (1) The Motor Vehicle Division administrator or designee is authorized to issue or renew an IID, manufacturer, or vendor certification.

(2) Upon receipt of an application for certification or renewal, the administrator or designee must review the application for completeness.

(a) If the application is incomplete, the administrator or designee with total discretion may either:

(i) contact the applicant to request missing information. The applicant has 20 days to give the requested information or the administrator or designee must deny the application; or

(ii) return to the applicant the incomplete application with notification to resubmit a completed application;

(b) If the application is complete, approve when all requirements are met and issue the IID, manufacturer, or vendor certification. The certification must be sent to the applicant by certified mail return receipt requested;

(c) Deny a completed application when all requirements are not met. If denied, send a written notification of denial to the applicant by certified mail return receipt requested;

(d) The Motor Vehicle Division may deny an application for certification for a manufacturer or vendor if the number of certification holders exceeds the ability to economically sustain more than a limited number of vendors.

(3) If an application is denied, the applicant must wait ninety days before submitting a new application.

(4) A certification is effective from the date stated on the letter and is valid for three years or until it is surrendered or revoked.

(5) The Motor Vehicle Division has absolute discretion to review the certification at any time, including requesting sample devices to conduct IID field and laboratory tests.

AUTH: 61-8-441, MCA

IMP: 61-8-441, MCA

NEW RULE VIII REVOCATION OR SURRENDER OF A CERTIFICATION

(1) The holder of a certification must send immediate notice to the Motor Vehicle Division if it is no longer in business or if it wishes to voluntarily relinquish its certification.

(2) The Motor Vehicle Division administrator or designee must revoke a letter of certification if it receives notice that the holder of a letter of certification is no longer in business or that the holder wishes to voluntarily relinquish its certification.

(3) The administrator or designee may revoke a letter of IID certification for an IID for the holder's violation of any of the laws or regulations related to the installation, servicing, monitoring, removal and calibration of IIDs, including but not limited to additional requirements including Montana statutes or administrative rules.

(4) The administrator or designee must issue a written notice of revocation and send it to the holder of the letter of certification for ignition interlock.

(5) Upon revocation of a letter of IID certification:

(a) the Motor Vehicle Division must notify all vendors that all of the uncertified IIDs must be removed and replaced by a certified IID within sixty-five days of the revocation;

(b) the vendor must notify all affected lessees of the revocation and the requirement the uncertified IID must be removed and replaced with a certified device within the sixty-five days and submit proof to the Motor Vehicle Division;

(c) upon revocation of an IID certification, the manufacturer's IID(s) will be removed from the list of certified IIDs on the Motor Vehicle Division's web site.

(6) Upon revocation of a letter of manufacturer or vendor certification:

(a) the vendor must notify all affected lessees of the revocation and the requirement they must transfer to a certified manufacturer or vendor within the sixty-five days and submit proof to the Motor Vehicle Division;

(b) upon revocation of a certification, the manufacturer's IID(s) will be removed from the list of certified manufacturers or vendors on the Motor Vehicle Division's web site.

AUTH: 61-8-441, MCA

IMP: 61-8-441, MCA

NEW RULE IX MODIFICATION TO A CERTIFIED IID (1) A certification holder must immediately notify the Motor Vehicle Division, in writing, of any material modification to a certified IID. A material modification is any addition or reduction in features, software version changes, configuration profile changes, or alteration in the components and/or the design of the certified IID.

(2) A manufacturer must resubmit evidence of compliance as required by the Administrative Rules of Montana to the Motor Vehicle Division within thirty days of notifying the Motor Vehicle Division of a material modification.

(3) The Motor Vehicle Division will determine if the device must be submitted for recertification.

AUTH: 61-8-441, MCA

IMP: 61-8-441, MCA

NEW RULE X CERTIFIED IID INSTALLATION, MAINTENANCE, CALIBRATION, REMOVAL, AND REPORTS (1) Each restricted driver must:

(a) have a certified IID installed in any vehicle they drive prior to the Motor Vehicle Division issuing them a probationary or restricted driving permit;

(b) submit the vehicle and installed IID for calibration and inspection at intervals not to exceed sixty-five days;

(c) pay all costs associated with the installation and calibration.

(2) At the time of installation, the certificate holder must ensure:

(a) the installer follows the manufacturer's instructions for proper installation and affixes to the IID a label containing the following notation: "Warning - This IID has been installed under the laws of the State of Montana. Attempts to disconnect, tamper with, or circumvent this IID may subject you to criminal prosecution. For more information, call (insert manufacturer, vendor, or service center's toll free number).";

(b) the restricted driver is thoroughly trained on the proper use and functionality of an IID; and

(c) that a user reference, operation, and problem-solving guide in English or Spanish is provided to the restricted driver when an IID is installed.

(3) At the time of calibration, the service center must:

(a) download data contained in an IID's memory or data logger. The manufacturer or vendor certification holder must make an electronic copy of the client data and the results of each examination; and

(b) remove from service any IID not passing calibration. The serial number of the device must be kept on record for three years. An IID removed from service for not passing calibration may be placed back in service only if it is repaired to meet the standards and all repairs are documented. These records must be kept for three years.

(4) At the time of removal, the certification holder must:

(a) remove the IID at the direction of the referring agencies at the end of the probationary period;

(b) remove the IID if the Motor Vehicle Division notifies the holder that the device is no longer certified. The holder must ensure the immediate replacement with a certified IID;

(c) return the vehicle in normal operating condition after removal;

(d) remove the IID, if the account becomes sixty days past due. If the restricted driver does not appear for a removal appointment and makes no attempt to appear to remove the IID, the replacement cost of the IID may be added to the lessee's account. The holder must immediately notify the referring agency and the Motor Vehicle Division of the removal of the IID; and

(e) provide any final report requested by the referring agency or the Motor Vehicle Division to the requestor once the IID has been removed from a restricted driver's vehicle(s).

(5) The certification holder must:

(a) ensure all downloaded data is reviewed. Any evidence of noncompliance, violations, or signs of tampering and/or circumvention must be reported as requested by, and in a format acceptable to the referring agency and the Motor Vehicle Division;

(b) determine a restricted driver's compliance with the referring agency's requirements;

(c) retain all information obtained as a result of each calibration or inspection. Information must be retained by the manufacturer, vendor, or service center for three years from the date the IID is removed from the vehicle;

(d) not authorize or assist with the disconnection of an IID, or enable the use of any "emergency bypass" mechanism or any other "bypass" procedure that allows a person restricted to use the vehicle equipped with a functioning IID, to start or operate a vehicle without providing all required breath samples. Doing so may subject the person to criminal prosecution and may cause the revocation of a certification; and

(e) report all known IID circumventions or tampering to the Motor Vehicle Division in a Motor Vehicle Division-approved electronic format within seven days of determining that an IID was circumvented or tampered with and if requested, must report to the referring agency in a similar time line.

(6) The manufacturer or vendor must notify the referring agency of any violation resets within five days of the violation reset in a format acceptable to the referring agency.

(7) In addition to any other information required by the Motor Vehicle Division or by a referring agency, all reports to the Motor Vehicle Division and the referring agency must include:

(a) the full name, address, and driver's license number of the restricted driver, lessee, and registered owner;

(b) the vehicle license registration number of the single vehicle in which the IID was installed;

(c) the unique serial number of the IID; and

(d) the toll free telephone number, and certification number of the manufacturer or vendor who prepared the report for the IID.

(8) Under no circumstances will a manufacturer, service center, or ignition interlock technician knowingly permit a restricted driver to drive a vehicle not equipped with a functioning IID.

(9) The sale or use of any type of remote code allowing a restricted driver to bypass a lockout condition or any user to not provide a breath sample on vehicle start up is prohibited.

(10) Upon request, the manufacturer or vendor must provide additional reports in a format acceptable to and at no cost to the Motor Vehicle Division and the referring agency.

(11) Retention of the record of installation, calibrations, downloads, service and associated invoices must be maintained by the certification holder for a minimum of three years.

AUTH: 61-8-441, MCA

IMP: 61-8-441, MCA

NEW RULE XI ADDITIONAL REQUIREMENTS (1) Notwithstanding other provisions of this chapter, each manufacturer of a certified IID, either on its own or through a vendor approved to do so by the manufacturer must:

(a) guarantee repair or replacement of a defective IID within the state of Montana within a maximum of forty-eight hours of receipt of a complaint or known failure of an IID;

(b) demonstrate to the satisfaction of Motor Vehicle Division, a service delivery plan under which any restricted driver may obtain installation and routine service of that manufacturer's IID within a one hundred mile radius of his or her place of residence or to request a waiver of this requirement due to hardship;

(c) provide written notification of any changes to a manufacturer's service center network to the Motor Vehicle Division within seven days of such change;

(d) maintain a twenty-four hour, three hundred sixty-five days a year toll-free telephone number for lessees and/or restricted drivers to call if they have problems with a leased IID. Calls must either be answered by an ignition interlock technician qualified to service the manufacturer's IIDs, or the call must be returned by a qualified technician within thirty minutes of the original call.

(2) The manufacturer must provide to the Motor Vehicle Division proof on or before the expiration date listed on the current valid insurance on file with the Motor Vehicle Division that the manufacturer has products liability insurance coverage with minimum liability limits of one million dollars per occurrence and three million dollars aggregate.

(3) The manufacturer or vendor certification holder must provide to the Motor Vehicle Division proof on or before the expiration date listed on the current valid

insurance on file that the certification holder has liability insurance with minimum liability limits of one million dollars per occurrence and three million dollars aggregate.

(4) Liability coverage must include, but not be limited to: Defects in product design, materials, and workmanship during manufacture, calibration, installation, removal, and all completed operations. Such insurance must be provided by a company authorized to offer such coverage in the state, and such company must include the State of Montana as an additional insured, and must agree to notify the Motor Vehicle Division not less than thirty days before the expiration or termination of such coverage. Insurance coverage required in this section must be in addition to, and not considered a replacement for other coverage required by the Administrative Rules of Montana.

AUTH: 61-8-441, MCA

IMP: 61-8-441, MCA

NEW RULE XII REVIEW OF DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATION

(1) The administrator or designee may deny, suspend, or revoke a letter of certification for an IID, manufacturer, or vendor certification receiving evidence that any letter of certification holder has failed to comply or no longer complies with any requirement or provision of law or this chapter. The following process will be used:

(a) the administrator or designee will give the applicant or certificate holder notice of the action and an opportunity to be heard prior to denial, suspension, or revocation of the letter of certification, except as provided in (2);

(b) upon receiving notice of the action, the applicant or certificate holder may request an administrative hearing to contest the decision. A request for an administrative hearing must:

(i) be made in writing and mailed to the Motor Vehicle Division; and

(ii) be received by the patrol's Motor Vehicle Division within twenty business days after the date of the notice of action.

(2) The administrator or designee may, without prior notification, suspend a letter of certification for a device, service center, or ignition interlock technician if the administrator or designee finds that there is danger to the public health, safety, or welfare that requires immediate action.

(3) Failure to request a hearing or failure to appear at a hearing, a prehearing conference, or any other stage of an adjudicative proceeding may constitute default and result in the entry of a final order.

(4) Administrative proceedings for revocation or other action will be promptly instituted and determined. The administrator or designee must give notice as practicable to the letter of certification holder.

(5) Unless the administrator or designee finds that immediate revocation is necessary or unless the certificate holder timely requests a hearing as provided under this section, a decision to revoke or suspend will be effective thirty days from the date of the notice of action decision unless the administrator or designee finds that immediate revocation is necessary.

AUTH: 61-8-441, MCA
IMP: 61-8-441, MCA

NEW RULE XIII HEARING AND APPEAL (1) Hearings under this chapter will be held pursuant to the Montana Administrative Procedure Act.

AUTH: 61-8-441, MCA
IMP: 61-8-441, MCA

REASON: The 1997 Montana Legislature passed Senate Bill 303. Section 3 of that bill was codified as 61-8-441, MCA. That section of law directed the Montana Department of Justice to adopt rules providing for the approval of ignition interlock devices and the installation, calibration, repair, and removal of approved devices. These rules are proposed to fulfill that legislative mandate.

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: Michele Snowberger, Department of Justice, Motor Vehicle Division, P.O. Box 201430, Helena, Montana, 59620-1430; telephone (406) 444-1776; fax (406) 444-2086; or e-mail msnowberger@mt.gov, and must be received no later than 5:00 p.m., February 3, 2017.

5. Peter Funk, Assistant Attorney General, Department of Justice, has been designated to preside over and conduct this hearing.

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

7. 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. Neither the Montana Secretary of State's office nor the Legislative Services Division

has any valid contact or address information on the primary bill sponsor of Senate Bill 303 from the 1997 Montana Legislature.

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

/s/ J. Stuart Segrest
J. Stuart Segrest
Rule Reviewer

/s/ Timothy C. Fox
Timothy C. Fox
Attorney General
Department of Justice

Certified to the Secretary of State November 28, 2016.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 37.40.101 and 37.40.422) AMENDMENT
pertaining to updating direct care)
wage effective dates and)
reimbursement updates effective) NO PUBLIC HEARING
January 1, 2017) CONTEMPLATED

TO: All Concerned Persons

1. On January 8, 2017, the Department of Public Health and Human Services proposes to amend the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 28, 2016, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.40.101 LEVEL OF CARE DETERMINATIONS (1) The three basic considerations in every level of care determination are the individual patient's medical, psychological, and social needs; the specific services required to fill these needs; and, the health and other personnel required to adequately provide these services.

(a) Specific level of care criteria, as well as preadmission screening procedures, are found in ARM 37.40.201 and ~~46.12.1303~~.

(2) and (3) remain the same.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-2-201, 53-6-101, 53-6-131, 53-6-402, MCA

37.40.422 DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE REPORTING/ADDITIONAL PAYMENTS INCLUDING LUMP SUM PAYMENTS FOR DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE AND BENEFIT INCREASES (1) Effective for the period ~~January 1, 2016~~ January 1, 2017 through ~~December 31, 2016~~ December 31, 2017, swing-bed hospitals must report to the department actual hourly wage and benefit rates paid for all direct care

and ancillary services workers or the lump sum amounts paid for all direct care and ancillary services workers that will receive the benefit of a direct care and ancillary workers' wage and benefit increase.

(2) remains the same.

(3) The department will pay Medicaid certified swing-bed hospitals located in Montana, in accordance with this rule, lump sum payments in addition to the reimbursement rate to be used only for wage and benefit increases or lump sum payments for direct care or ancillary services workers in swing-bed hospitals.

(a) The department will determine lump sum payments ~~January 1, 2016~~ January 1, 2017, and again six months from that date as a pro rata share of appropriated funds allocated for increases in direct care and ancillary services workers' wages and benefits or lump sum payments to direct care and ancillary services workers.

(b) through (4) remain the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.40.101 and 37.40.422.

ARM 37.40.101

The department is proposing to amend this rule in order to remove a reference to ARM 46.12.1303. ARM 46.12.1303 was repealed during the transfer of rules from the Department of Social and Rehabilitative Services which was incorporated into the current department in 1995. This is necessary to ensure the rules are current and not confusing to the public.

ARM 37.40.422

Medicaid swing bed rates are effective annually between January 1 and December 31. Every October, the department changes the calendar year referenced in ARM 37.40.422 to the upcoming year.

The text of (1) will be updated from calendar year 2016 to calendar year 2017. The proposed amendment to (1) is necessary to provide a current period for providers of swing-bed services to report to the department the hourly wage and benefits paid for direct care and ancillary services workers.

The proposed amendment to (3)(a) is likewise necessary to update January 1, 2016 to January 1, 2017. This change gives notice of the current period for funding of Medicaid direct-care wage payments to the swing-bed providers.

Fiscal Impact

The department is continuing the methodology for Medicaid swing beds that incorporates the calendar year average nursing facility payment rate calculation. There are 45 hospitals and critical access hospitals (CAH) Medicaid swing-bed providers. Fourteen of the providers will participate in the fiscal year (FY) 2017 Direct Care Wage payment in the amount of \$340,484. This includes the old funding and new funding for wages.

The change in funding is to implement an approximate 2% increase in Medicaid swing-bed provider rates. The total state and federal funds that will be allocated to swing-bed providers in calendar year 2017 is approximately \$6,650,298 inclusive of the direct care wages payment. The projected Medicaid swing-bed rate will increase from an average of \$171.04 to \$174.35 inclusive of the direct care wages payment. For providers that do not participate in the direct care wage funding the calendar year average rate will increase from \$166.78 to \$170.09.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on January 6, 2017. Comments may also be faxed to (406) 444-9744 or e-mailed to dphslegal@mt.gov.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kenneth Mordan at the above address no later than 5:00 p.m., January 6, 2017.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 4.5 persons based on forty-five hospital/critical access hospital (CAH) swing-bed providers.

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

9. 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 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 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.

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

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

/s/ Caroline Warne
Caroline Warne, Attorney
Rule Reviewer

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

Certified to the Secretary of State November 28, 2016.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 38.5.1010 and 38.5.2102,	)	AMENDMENT
pertaining to electric standards for)	
utilities and ARM 38.5.2202 and	)	NO PUBLIC HEARING
38.5.2302 pertaining to pipeline	)	CONTEMPLATED
safety)	

TO: All Concerned Persons

1. On January 16, 2017, the Department of Public Service Regulation proposes to amend the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on January 3, 2017, to advise us of the nature of the accommodation that you need. Please contact Justin Kraske, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6376; fax (406) 444-7618; TDD (406) 444-6199; or e-mail jkraske@mt.gov.

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

38.5.1010 INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL SAFETY CODE (1) Pursuant to 69-4-201, MCA, the commission is empowered to implement and enforce construction standards for utility lines and facilities and for that purpose the commission hereby adopts and incorporates by reference the ~~2012~~ 2017 edition of the National Electrical Safety Code (NESC). A copy of the NESC may be obtained from the American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, New York 10036, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-4-201, MCA
IMP: 69-4-201, MCA

REASON: Amendment of ARM 38.5.1010 (periodic update) is necessary to allow the department to administer the most recent version of the National Electrical Safety Code. The department is required to update the utility electric standards to the most recent edition of the National Electrical Safety Code to comply with the statutory mandate in 69-4-201(2), MCA. A copy of The National Electrical Safety

Code may be reviewed at the department's offices or is available online at [http://webstore.ansi.org/RecordDetail.aspx?sku=IEEE+C2-2017+\(PP\)](http://webstore.ansi.org/RecordDetail.aspx?sku=IEEE+C2-2017+(PP)).

38.5.2102 ELECTRIC UTILITY NOMINAL VOLTAGE AND PERMISSIBLE RANGE OF VARIANCE (1) The standards of product and service for each public utility providing electric service subject to the jurisdiction of the commission shall, whether established by ordered tariff provision or administrative rule, allow for a nominal voltage and permissible range of variation as specified in American National Standards Institute (ANSI) C84.1 ~~2014~~ 2016. A copy of ANSI C84.1 may be obtained from the American National Standards Institute, Operations, 25 West 43rd Street, 4th Floor, New York, New York 10036, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

(2) This rule shall not apply:

- (a) to transmission systems not used to directly serve customers;
- (b) where customers specifically request a voltage other than standard nominal system voltages as specified in ANSI C84.1; or
- (c) in instances where voltage is in excess of 34,500 volts.

AUTH: 69-3-103, 69-4-201, MCA
IMP: 69-3-108, 69-4-201, MCA

REASON: Amendment of ARM 38.5.2102 (periodic update) is necessary to allow the department to administer the most recent version of the nominal voltage standards set out by the American National Standards Institute. The department is required to update the utility electric voltage standards to the most recent edition established by the American National Standards Institute to comply with the statutory mandate in 69-4-201(2), MCA. A copy of ANSI C84.1 may be reviewed at the department's offices or is available online at <http://webstore.ansi.org/RecordDetail.aspx?sku=ANSI+C84.1-2016>.

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before October 30, ~~2015~~ 2016. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission

adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before October 30, ~~2015~~ 2016. A copy of the referenced CFRs is available from the United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

REASON: Amendment of ARM 38.5.2202 and 38.5.2302 (annual update) is necessary to allow the department to administer the most recent version of federal rules applicable in the department's administration of all federal aspects of Montana's pipeline safety programs. A copy of the referenced regulations may be reviewed at the department's offices or are available online at http://www.ecfr.gov/cgi-bin/text-idx?SID=1d49a3b137cb1b6fc45251074e634b44&c=ecfr&tpl=/ecfrbrowse/Title49/49cfrv3_02.tpl.

4. Concerned persons may submit their written data, views, or arguments to Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (406) 444-6376; fax (406) 444-7618; or e-mail jkraske@mt.gov and must be received no later than 5:00 p.m. January 9, 2017.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Justin Kraske, Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, or e-mail jkraske@mt.gov to be received no later than 5:00 p.m., January 9, 2017.

7. If the PSC receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 2 entities based on the 27 entities affected.

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes that name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Department of Public Service Regulation, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Justin Kraske at (406) 444-7618, e-mailed to jkraske@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

9. An electronic copy of this proposal notice is available on the PSC's web site and also 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. However, the PSC advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. 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.

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

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

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ BRAD JOHNSON
Brad Johnson
Chairman
Department of Public Service Regulation

Certified to the Secretary of State November 28, 2016.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION,
RULE I pertaining to model bylaws and	)	AMENDMENT, AND REPEAL
statutory reference for credit unions, the)	
amendment of ARM 2.59.401 and)	
2.59.402 pertaining to supervisory and)	
examination fees and limited income)	
persons, and the repeal of 2.59.404)	
pertaining to corporate credit unions)	

TO: All Concerned Persons

1. On October 14, 2016, the Department of Administration published MAR Notice No. 2-59-547 pertaining to the proposed adoption, amendment, and repeal of the above-stated rules at page 1738 of the 2016 Montana Administrative Register, Issue Number 19.

2. No comments were received.

3. The department has adopted New Rule I (ARM 2.59.429) exactly as proposed.

4. The department has amended ARM 2.59.401 and 2.59.402 exactly as proposed.

5. The department has repealed ARM 2.59.404 exactly as proposed.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State November 28, 2016.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
2.59.104, 2.59.111, 2.59.125, 2.59.901,)
2.59.1101, 2.59.1102, and 2.59.1603)
pertaining to semiannual assessment,)
retention of bank records, definitions,)
change in location, application and)
review procedures, and state, county,)
and municipal issues for banks)

TO: All Concerned Persons

1. On October 14, 2016, the Department of Administration published MAR Notice No. 2-59-549 pertaining to the proposed amendment of the above-stated rules at page 1744 of the 2016 Montana Administrative Register, Issue Number 19.

2. No comments were received.

3. The department has amended ARM 2.59.104, 2.59.111, 2.59.125, 2.59.901, 2.59.1101, 2.59.1102, and 2.59.1603 exactly as proposed.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State November 28, 2016.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT AND
2.59.301, 2.59.310, and 2.59.318	)	REPEAL
pertaining to advertising, standardized)	
forms and procedures, and the annual)	
reporting form for consumer loan)	
licensees, and the repeal of ARM)	
2.59.311 pertaining to the transition of)	
licenses to the NMLS)	

TO: All Concerned Persons

1. On October 14, 2016, the Department of Administration published MAR Notice No. 2-59-550 pertaining to the proposed amendment and repeal of the above-stated rules at page 1750 of the 2016 Montana Administrative Register, Issue Number 19.

2. No comments were received.

3. The department has amended ARM 2.59.301, 2.59.310, and 2.59.318 exactly as proposed.

4. The department has repealed ARM 2.59.311 exactly as proposed.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State November 28, 2016.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through VIII pertaining to)
Annuity Mortality Tables -)
Determining Reserve Liabilities)

TO: All Concerned Persons

1. On October 28, 2016, the Commissioner of Securities and Insurance, Montana State Auditor (CSI), published MAR Notice No. 6-222 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1890 of the 2016 Montana Administrative Register, Issue Number 20.

2. The department has adopted the above-stated rules as proposed: New Rules I (6.6.5301), II (6.6.5302), III (6.6.5303), IV (6.6.5304), V (6.6.5306), VI (6.6.5307), VII (6.6.5308), and VIII (6.6.5309).

3. A hearing was held on November 17, 2016. No comments or testimony were received by the deadline date.

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State November 28, 2016.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the adoption of New Rule I and the amendment of ARM 6.6.201, 6.6.202, 6.6.203, 6.6.204, 6.6.205, 6.6.206, 6.6.207, 6.6.208, and 6.6.209, pertaining to Life Insurance Buyer's Guide) NOTICE OF ADOPTION AND AMENDMENT)))))))

TO: All Concerned Persons

1. On October 14, 2016, the Commissioner of Securities and Insurance, Montana State Auditor (CSI), published MAR Notice No. 6-225 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1754 of the 2016 Montana Administrative Register, Issue Number 19.

2. The CSI has adopted New Rule I (6.6.210) with the following changes, new matter underlined, deleted matter interlined.

NEW RULE I (6.6.210) FUNERAL PREARRANGEMENTS (1) through (1)(c) remain as proposed.

(d) the impact of on the prearrangement, including:

(i) through (h) remain as proposed.

3. The CSI has amended ARM 6.6.201, 6.6.202, 6.6.203, 6.6.204, 6.6.205, 6.6.206, 6.6.207, 6.6.208, and 6.6.209 exactly as proposed.

4. A hearing was held on November 10, 2016. The CSI has thoroughly considered the only comment received. A summary of the comment and the CSI's response follows:

COMMENT NO. 1: A commenter pointed out that there was a typo in New Rule I (ARM 6.6.210)(1)(d), where the word "of" should be "on."

RESPONSE NO 1: The CSI agrees with the error that was pointed out and changed the rule accordingly.

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State November 28, 2016.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 10.57.101, 10.57.102,	)	REPEAL
10.57.107, 10.57.109, 10.57.201A,)	
10.57.215, 10.57.218, 10.57.410)	
through 10.57.421, 10.57.424,)	
10.57.427 through 10.57.433,)	
10.57.435, 10.57.438, 10.57.601B,)	
and 10.57.602 and the repeal of ARM)	
10.57.201 pertaining to educator)	
licensure)	

TO: All Concerned Persons

1. On October 14, 2016, the Board of Public Education published MAR Notice No. 10-57-278 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1775 of the 2016 Montana Administrative Register, Issue Number 19.

2. The board has amended ARM 10.57.107 as proposed, to be effective upon adoption.

3. The board has amended 10.57.101, 10.57.109, 10.57.201A, 10.57.215, 10.57.218, 10.57.411, 10.57.412, 10.57.414 through 10.57.421, 10.57.424, 10.57.427 through 10.57.433, 10.57.435, 10.57.438, 10.57.601B, and 10.57.602 as proposed, to be effective January 1, 2017.

4. The board has amended the following rules as proposed, effective January 1, 2017, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

10.57.102 DEFINITIONS The following definitions apply to this chapter.

(1) remains as proposed.

(2) "Accredited educator preparation program" means:

(a) an educator preparation program accredited by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) or the Montessori Accreditation Council for Teacher Education (MACTE). A MACTE educator preparation program is subject to the following restrictions:

(i) Completion of a MACTE accredited program may only be used by an applicant for licensure who has also completed at least a bachelor's degree; and

(ii) The resulting license granted to an applicant for licensure who has completed a MACTE accredited program shall be limited to early grades or middle grades licensure and only for the grade levels covered by the MACTE accredited program completed by the applicant; or

(b) through (12) remain as proposed.

(13) "Year of administrative experience" means employment as a licensed administrator at any level within a state accredited P-12 school system, or in an educational institution specified in 20-9-707, MCA, ~~as a licensed administrator~~ for the equivalent of at least .5 full-time employee (FTE) ~~for the duration of a school year comparable to a 180 day school year~~. Experience gained prior to initial licensure is not considered. Experience as a County Superintendent may be considered as "administrative" experience with evidence of the following:

(a) and (b) remain as proposed.

(14) "Year of teaching experience" means employment as a licensed teacher at any level within a state accredited P-12 school system, or in an educational institution specified in 20-9-707, MCA, ~~as licensed instructional staff~~ for the equivalent of at least .5 FTE ~~for the duration of a school year comparable to a 180 day school year~~. Experience gained prior to initial licensure is not considered.

10.57.410 CLASS 2 STANDARD TEACHER'S LICENSE (1) through (3) remain as proposed.

(4) If the educator preparation program completed by the applicant is not in Montana, upon initial application of a Class 1, or Class 2, or Class 3 license, the applicant must provide:

(a) through (6) remain as proposed.

10.57.413 CLASS 3 ADMINISTRATIVE LICENSE (1) through (3) remain as proposed.

(4) An applicant for a Class 3 administrative license who completed an educator preparation program which does not meet the definition in ARM 10.57.102(2), who is currently licensed in another state at the same level of licensure, may be considered for licensure with verification of five years of successful administrative experience as defined in ARM 10.57.102 as documented by a recommendation from a state accredited P-12 school employer on a form prescribed by the Superintendent of Public Instruction and approved by the Board of Public Education. ~~The additional requirements set forth in ARM 10.57.414 through 10.57.418 must also be met. The requirements of ARM 10.57.414(1)(c)(i-iii) must be met by an applicant seeking a superintendent endorsement.~~

(5) An applicant for a Class 3 administrative license must submit verified completion of the online course "An Introduction to Indian Education for All in Montana."

(5) and (6) remain as proposed but are renumbered (6) and (7).

5. The board has repealed ARM 10.57.201 as proposed, to be effective January 1, 2017.

6. The following comments were received.

COMMENT 1: The Certification and Practices Advisory Council (CSPAC) recommended that the Office of Public Instruction (OPI) consider revising the

definition of "year of teaching experience" to perhaps include the experience of working in non-teaching positions such as counseling. The OPI commented that the concept of expanding "teaching experience" to include non-teaching experience was not discussed through the process of amending these rules and asked the Board of Public Education (BPE) to consider that amendment in a future rulemaking.

The OPI suggested language clarifying the length of time required in a classroom in the definitions "year of administrative experience" and "year of teaching experience" in ARM 10.57.102.

RESPONSE: The board thanks the CSPAC and OPI for the suggestions and has incorporated the language suggested by the OPI into the rule amendments.

COMMENT 2: The OPI suggested edits to ARM 10.57.410 to clarify that out-of-state applicants for Class 3 administrator licenses are not required to provide PRAXIS test scores.

RESPONSE: The board thanks the OPI for the comment and has incorporated the language into the rule amendments.

COMMENT 3: The Montana Public Education Center (MTPEC) asked the BPE and CSPAC to consider making an exception for applicants for a Class 3 license with a superintendent endorsement to the requirement for three years of teaching experience. The individual organizations of MTPEC supported the recommendation commenting that out-of-state applicants for a superintendent endorsement would have the requisite experience to be licensed without proof of three years of classroom experience or one year of principal experience. CSPAC recommended that the BPE accept this amendment. Ken Morrison also submitted comments in support of the proposed amendment. The MTPEC made the additional comment that the form used to verify work experience of such an applicant be approved by the BPE.

The Council of Deans also commented on this issue, opposing the amendment for a variety of reasons. The OPI commented that the agency does not support the amendment and provided statistics indicating there may not be an immediate need for more endorsed superintendents. Further, the Deans and the OPI commented that teaching experience for administrators is valuable for those administrators responsible for teacher evaluations.

The BPE received several comments from Montana educators, including the Montana State University Department of Education faculty and members of the University Teacher Education Council, as well as the faculty from the University of Montana Department of Educational Leadership, opposing this suggestion. The commenters felt it was necessary for an administrator to have classroom experience especially if the administrator would be evaluating the educator.

RESPONSE: The board thanks the commenters for their comments and has amended ARM 10.57.413 regarding superintendents' endorsement on a Class 3 license as recommended by CSPAC and MTPEC.

COMMENT 4: The OPI asked that ARM 10.57.413 be amended to include applicants for a Class 3 administrator license in the requirement for educators to have completed the online course: "An Introduction to Indian Education for All in Montana." If ARM 10.57.410 is amended as suggested above, this requirement no longer applies to applicants for a Class 3 administrative license. The inclusion of this requirement is more appropriate in ARM 10.57.413 which is specifically related to Class 3 applicants.

RESPONSE: The board thanks the OPI for the comment and has incorporated the language into the rule amendments.

COMMENT 5: Ryan Hunter asked the board to consider amendments that would allow an experienced Montessori preschool teacher with a master's degree in Montessori education to be licensed.

RESPONSE: The board thanks the commenter for his comments and has carefully and thoroughly considered ways to address the licensure of Montessori trained applicants for Montana licensure.

COMMENT 6: The Montana Public Education Center submitted comments collectively (and as individual members of MEA-MFT, MT Rural Education Association, MT Quality Education Coalition, School Administrators of MT, and MT School Boards Association) advocating for inclusion of Montessori Accreditation Council for Teacher Education (MACTE) programs in the ARM 10.57.102(2) definition of "accredited educator preparation program" with specific requirements of a bachelor's degree and limiting licensure to elementary and middle grades. CSPAC does not recommend adding MACTE to ARM 10.57.102. Montessori educator Katy Wright and Tiffany Lyden, Helena Public Montessori Parents organization president, also gave comments in support of the amendment to the definition and including Montessori trained teachers in Montana's licensing standards. Previous Montessori classroom student, Ella Currier, provided comments of general support for the Montessori program in public schools.

The Montana Council of Deans submitted comments regarding the Council's position on recognizing MACTE as equivalent to the Council for Accreditation of Educator Preparation (CAEP), suggesting that the programs are not equivalent. The MCDE stated that any provider of a program offering a postsecondary degree/certificate must be recognized by the Montana Board of Regents and any educator preparation program must be accredited through meeting the accreditation standards promulgated by the Board of Public Education in ARM Title 10, chapter 58. Ann Eubank from Montana State University Department of Education, and Kristi Murphy and Julie Bullard from University of Montana School of Education supported and added to the concerns of the Deans, opposing the addition of MACTE as an accredited educator preparation program. It was suggested that the requirements for regional accreditation and approval of accreditation by BPE should be met before MACTE is included in the definition of an accredited educator preparation program in ARM 10.57.102.

The board received several additional comments from Montana educators from the universities, including the Montana State University Department of Education faculty and members of the University Teacher Education Council, opposing the inclusion of MACTE as an accredited educator preparation program.

RESPONSE: The board thanks the education organizations, the Council of Deans, and other commenters for their comments. The board approved including MACTE preparation programs as comparable to other nationally recognized educator preparation programs currently identified in the definition of "accredited educator preparation program" and has amended the definition in ARM 10.57.102.

COMMENT 7: The Montana Public Education Center submitted comments collectively (and as individual members of MEA-MFT, Montana Rural Education Association, Montana Quality Education Coalition, School Administrators of Montana, and Montana School Boards Association) supporting the inclusion of an endorsement of autism in ARM 10.57.412. The Council of Deans expressed concerns with including autism as a stand-alone endorsement, citing among other issues, the problems small schools could face without a special education teacher with broad training across multiple disabilities. The OPI also submitted concerns about adding this endorsement.

RESPONSE: The board thanks the commenters for their comments but did not approve including autism as an endorsement in ARM 10.57.412.

COMMENT 8: Tom Moore, Assistant Superintendent for Secondary Education in the Great Falls Public Schools, submitted comments in support of adding Reserve Officer Training Corps (ROTC) as a Class 4 endorsement, and support for the Jan. 1, 2017 effective date.

RESPONSE: The board thanks Mr. Moore for his support and 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 28, 2016.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 12.6.2215 pertaining to exotic)
species classification)

TO: All Concerned Persons

1. On September 2, 2016, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-464 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1501 of the 2016 Montana Administrative Register, Issue Number 17.

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

12.6.2215 LIST OF PROHIBITED SPECIES (1) through (3) remain as proposed.

(4) The following mammals are classified as prohibited species:

(a) remains as proposed.

(b) Aotidae Family (Night and Owl Monkeys);

(b) remains as proposed but is renumbered (c).

(d) Atelidae Family (Howlers and Spider Monkeys);

(c) through (j) remain as proposed but are renumbered (e) through (l).

(m) Pitheciidae Family (Titis and Saki Monkeys);

(k) through (p) remain as proposed but are renumbered (n) through (s).

(5) through (7) remain as proposed.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-707, 87-5-708, 87-5-711, 87-5-712, MCA

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

COMMENT 1: The commission received three comments in general support of the classification of the Callitrichidae Family in order to protect our ecosystems, native species, and human health and safety.

RESPONSE 1: The commission appreciates the participation and support in this rulemaking process.

COMMENT 2: The commission received one comment in general support of the classification of the Callitrichidae Family that also brought to light the issue that there may be some families of primates that are inadvertently excluded from being

classified as they used to be under the family Cebidae but now have new family names.

RESPONSE 2: In 2009, the scientific community accepted the creation of three new taxonomic families of primates from Cebidae: Aotidae, Atelidae, and Pitheciidae. Members of these families were classified by the commission as prohibited in 2006 when those species were under Cebidae. This comment brought to light the issue that they now need to be included under their new family names. The commission has amended the proposal to include these new family names.

COMMENT 3: One comment was received opposing the classification in order to protect these primates from being taken from their owners and placed in worse conditions.

RESPONSE 3: The Department of Fish, Wildlife and Parks does not have any record of any members of the Callitrichidae Family existing in Montana.

COMMENT 4: One comment was received opposing the prohibited classification, and suggested a strict screening process in order to own one instead.

RESPONSE 4: The commission believes that the dangers and risks of owning these species justify prohibiting them completely. Also, "screening" of persons wishing to own a primate of this family is beyond the scope of FWP's authority.

COMMENT 5: One comment was received opposing all small primate and monkey prohibition classifications because they could not breed or survive in Montana winters and therefore the prohibitions are useless.

RESPONSE 5: The commission believes the prohibition is required as the risk of the members of the Callitrichidae Family is danger to humans when these species are in captivity as they have a nervous disposition and can become aggressive after sexual maturity.

/s/ William Schenk
William Schenk
Rule Reviewer

/s/ Dan Vermillion
Dan Vermillion
Chair
Fish and Wildlife Commission

Certified to the Secretary of State November 28, 2016

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.189.401 fee schedule,	)	REPEAL
24.189.601 application procedures,)	
24.189.604 minimum standards,)	
24.189.610 work samples-)	
examination, and 24.189.633)	
temporary permit, and the repeal of)	
ARM 24.189.404 license preparation,)	
24.189.407 renewals, and)	
24.189.2401 complaint procedure)	

TO: All Concerned Persons

1. On August 5, 2016, the Board of Psychologists (board) published MAR Notice No. 24-189-35 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1348 of the 2016 Montana Administrative Register, Issue No. 15.

2. On August 29, 2016, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. One written comment was received by the September 2, 2016 deadline.

3. A summary of the comment received and the board response are as follows:

COMMENT 1: One commenter specifically supported the proposed changes to ARM 24.189.604.

RESPONSE 1: The board appreciates all comments made during the rulemaking process.

4. The board has amended ARM 24.189.401, 24.189.601, 24.189.604, 24.189.610, and 24.189.633 exactly as proposed.

5. The board has repealed ARM 24.189.404, 24.189.407, and 24.189.2401 exactly as proposed.

BOARD OF PSYCHOLOGISTS
JAMES MURPHEY, PH.D, CHAIRPERSON

/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 28, 2016

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, the amendment of ARM 42.18.122, 42.18.134, 42.18.135, and 42.18.136, and the repeal of ARM 42.18.133 pertaining to property reappraisal	)	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL
)	
)	
)	
)	
)	

TO: All Concerned Persons

1. On October 14, 2016, the Department of Revenue published MAR Notice No. 42-2-964 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1805 of the 2016 Montana Administrative Register, Issue Number 19.

2. On November 9, 2016, a public hearing was held to consider the proposed adoption, amendment, and repeal. No members of the public appeared for the hearing. The Montana Forest Owners Association provided a written statement in support of the amendment of ARM 42.18.135, as proposed. No other comments were received.

3. The department adopts New Rule I (42.18.137), as proposed, effective January 1, 2017, but with the following change to add the 2017-2018 reappraisal cycle date range to the rule title:

NEW RULE I (42.18.137) 2017-2018 AGRICULTURAL LAND REAPPRAISAL
(1) through (3) remain as proposed.

4. The department amends ARM 42.18.122, 42.18.134, 42.18.135, and 42.18.136, and repeals ARM 42.18.133, as proposed, effective January 1, 2017.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 28, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 42.21.113, 42.21.123,)	
42.21.131, 42.21.137, 42.21.138,)	
42.21.139, 42.21.140, 42.21.151,)	
42.21.153, 42.21.155, and)	
42.22.1311 pertaining to the trended)	
depreciation schedules for valuing)	
property)	

TO: All Concerned Persons

1. On October 14, 2016, the Department of Revenue published MAR Notice No. 42-2-965 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1813 of the 2016 Montana Administrative Register, Issue Number 19.
2. The department has amended the above-stated rules, as proposed, effective January 1, 2017.
3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 28, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.20.660, 42.20.665,)
42.20.670, 42.20.675, 42.20.680, and)
42.20.681 pertaining to agricultural)
land valuation)

TO: All Concerned Persons

1. On October 14, 2016, the Department of Revenue published MAR Notice No. 42-2-966 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1833 of the 2016 Montana Administrative Register, Issue Number 19.
2. The department amends the above-stated rules, as proposed, effective January 1, 2017.
3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 28, 2016.

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 2017)
Montana Administrative Register)

TO: All Concerned Persons

1. On October 28, 2016, the Secretary of State published MAR Notice No. 44-2-219 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1936 of the 2016 Montana Administrative Register, Issue Number 20.

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

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

2017 Register Publication Schedule		
Issue	Filing (due by noon)	Publication
1	December 27	January 6
2	January 9	January 20
3	January 23	February 3
4	February 6	February 17
5	February 27	March 10
6	March 13	March 24
7	April 3	April 14
8	April 17	April 28
9	May 1	May 12
10	May 15	May 26
11	May 30	June 9
12	June 12	June 23
13	June 26	July 7
14	July 10	July 21
15	July 24	August 4
16	August 7	August 18
17	August 28	September 8
18	September 11	September 22
19	October 2	October 13
20	October 16	October 27

21	October 30	November 9
22	November 13	November 23 <u>24</u>
23	November 27	December 8
24	December 11	December 22

(2) remains as proposed.

3. The Secretary of State is making this change because November 23 is Thanksgiving and a legal state holiday.

4. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 28th day of November, 2016.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 1.2.104 and ARM 1.2.423)
pertaining to fees charged by)
Administrative Rules Services)

TO: All Concerned Persons

1. On October 28, 2016, the Secretary of State published MAR Notice No. 44-2-220 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1939 of the 2016 Montana Administrative Register, Issue Number 20.
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 28th day of November, 2016.

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, 2016. This table includes those rules adopted during the period April 1, 2016, through June 30, 2016, 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, 2016, 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 2016 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.

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