

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 4

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 4.4.306 and 4.4.318 pertaining) PROPOSED AMENDMENT
to the Hail Insurance Program)

TO: All Concerned Persons

1. On March 13, 2017, at 11:00 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 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 March 10, 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 proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

4.4.306 APPLICATION FOR INSURANCE (1) Persons wishing to participate in the hail insurance program shall file a properly filled out and signed application ~~in the office of the county assessor~~ with the Montana Department of Agriculture no later than August 15.

AUTH: 80-2-201, MCA
IMP: 80-2-203, MCA

4.4.318 PAYING 100% WHEN THE LOSS SHOWS AT LEAST 95% 90% OR ABOVE ACTUAL LOSS (1) The state hail insurance program will pay the producer 100% of the payable amount when the adjuster shows by count that the loss is ~~95%~~ 90% or above.

AUTH: 80-2-201, MCA
IMP: 80-2-201, 80-2-244, MCA

REASON: The Montana Hail Insurance Board voted to change rules to reflect the fact that county offices are no longer available and to adopt the industry standard on total loss.

ECONOMIC IMPACT STATEMENT: Amending ARM 4.4.318 may increase the amount owed to hail claimants between \$1 and \$5000.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, P.O. Box 200201, 302 N. Roberts, 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., March 20, 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/ Libbi Lovshin
Libbi Lovshin
Administrator
Agriculture

Certified to the Secretary of State February 6, 2017.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 12.5.701 and 12.5.702, the) PROPOSED AMENDMENT,
transfer and amendment of ARM) TRANSFER AND AMENDMENT,
12.11.341, the adoption of New Rule) ADOPTION, AND REPEAL
I, and the repeal of ARM 12.11.342)
pertaining to aquatic invasive species)

TO: All Concerned Persons

1. On March 14, 2017, at 6:00 p.m., the Department of Fish, Wildlife and Parks (department) will hold a public hearing at the Fish, Wildlife and Parks Headquarters, 1420 East 6th Avenue, Helena, Montana, to consider the proposed amendment, transfer and amendment, adoption, and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than March 3, 2017, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

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

12.5.701 IDENTIFIED CONTAMINATED BODIES OF WATER FOR EURASIAN WATERMILFOIL (1) and (2) remain the same.

AUTH: 80-7-1007, 80-7-1008, MCA
IMP: 80-7-1008, 80-7-1010, MCA

12.5.702 RESTRICTIONS WITHIN IDENTIFIED CONTAMINATED BODIES OF WATER FOR EURASIAN WATERMILFOIL (1) and (2) remain the same.

AUTH: 80-7-1007, 80-7-1008, MCA
IMP: 80-7-1008, 80-7-1010, MCA

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

12.11.341 (12.5.706) AQUATIC INVASIVE SPECIES STATIONS IDENTIFIED AREAS THREATENED WITH AQUATIC INVASIVE SPECIES AND APPLICABLE QUARANTINE MEASURES (1) Because of the known existence of

aquatic invasive mussels in the areas defined in [NEW RULE I], the department has identified all other areas of the State of Montana as threatened for infestation of aquatic invasive mussels.

(2) The department has determined the following quarantine measures are necessary to prevent the spread of aquatic invasive mussels:

(1)(a) vessels and equipment approaching a department-operated inspection station must stop as directed;:-

(2) Vessels intended for launching on any water in Montana are subject to inspection for aquatic invasive species.

(b) vessels and equipment entering the state that do not approach a department inspection station must be inspected for aquatic invasive species prior to launching in any Montana water body, unless previously approved by the department for local use only;

(c) vessels and equipment traveling across the Continental Divide into the Columbia River Basin must during operating hours report to a department inspection station prior to launch within the Columbia River Basin after use on waters outside of the Columbia River Basin. The department will post approved inspection stations and operating hours at fwp.mt.gov;

(d) upon removing a vessel from any surface waters and before leaving the associated boat launch or parking area, all aquatic vegetation must be removed from the vessel, trailer, and equipment;

(e) transport of surface water is prohibited and drain plugs must be removed during transport;

(f) live aquatic bait and fish must be transported in clean non-surface water where allowed in current public fishing regulations; and

(g) if the vessel does not have a drain plug, reasonable measures must be taken to dry or drain all compartments or spaces that hold water, including emptying bilges, applying absorbents, and ventilation.

(3) Areas subject to ~~the search~~ inspection include but are not limited to:

(a) the exterior of the vessel;

(b) livewells;

(c) bait buckets;

(d) ballast tanks;

(e) bilge areas; and

(f) trailer transporting vessel.

(4) Any vessel at an inspection station found with invasive species, or any vessel containing residual water and that has been in infested water in the last 30 days, will be decontaminated by AIS staff as arranged by the department. Infested waters that contain microscopic AIS species including zebra mussels, *Dreissena polymorpha*, and quagga mussels, *Dreissena bugensis*, and are identified on the map titled "Mussel-Infested States and Waterbodies" available at fwp.mt.gov. AIS staff shall refer to the map or to the most current known information.

(5) Decontamination methods on vessels subject to (4) may include hot water washing, hot water flushing, and drying time, including interior portions of complex engine systems and pumps. A decontamination order may be issued that requires a drying period as directed by the department. The drying time will depend on weather conditions. During the drying period, the department may lock the vessel to the

trailer to prevent launching. The department will be responsible for arranging the time and location to unlock the vessel when the drying time is complete. It is prohibited for anyone other than authorized department staff to remove the lock during the drying time. If a vessel requires a drying period as part of the decontamination process, then the vessel must pass a second inspection prior to launching in Montana waters in order to be considered decontaminated.

(6) Emergency response vehicles and equipment engaging in emergency response activities are exempt.

(7) Violation of this rule is subject to penalty under 80-7-1014, MCA.

AUTH: 80-7-1007, 80-7-1008, 80-7-1011, 80-7-1012, 87-1-201, MCA

IMP: 80-7-1007, 80-7-1008, 80-7-1010, 80-7-1011, MCA

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

NEW RULE I IDENTIFIED BODIES OF WATER CONFIRMED OR SUSPECTED FOR AQUATIC INVASIVE MUSSELS (1) The department has identified the following bodies of water as infested with confirmed or suspected aquatic invasive mussels:

(a) Canyon Ferry Reservoir; and

(b) Tiber Reservoir (Lake Elwell).

(2) The department has determined the following quarantine measures are necessary to prevent further spread of the species from these bodies of water:

(a) all vessels and equipment launched or having otherwise entered the water bodies listed in (1) must be inspected and, if directed by the department, decontaminated at a department decontamination station as required in ARM [12.11.341, proposed in this notice to be transferred to ARM 12.5.706] prior to leaving the water body. The following are exempt:

(i) vessels approved by the department for local travel only;

(ii) emergency response vehicles and equipment engaged in emergency response activities.

(b) when an approved or decontaminated vessel leaves the water bodies listed in (1), all aquatic bait must be transported without water.

(3) Any rules or regulations for boat ramps or boat launching on the water bodies listed in (1) operated by the Bureau of Reclamation are considered rules adopted pursuant to the authority of the department for enforcement of these sites.

(4) Violation of this rule is subject to penalty under 80-7-1014, MCA.

AUTH: 80-7-1007, 80-7-1008, 80-7-1010, 87-1-201, MCA

IMP: 80-7-1008, 80-7-1010, 80-7-1011, MCA

6. The department is proposing to repeal the following rule:

12.11.342 REMOVAL OF VEGETATION AND PLUGS

AUTH: 80-7-1007, 80-7-1012, 87-1-201, MCA

IMP: 80-7-1007, MCA

REASON: The department is proposing to amend the titles of ARM 12.5.701 and 12.5.702 to clarify that they pertain to Eurasian Watermilfoil. The department is proposing to transfer and amend ARM 12.11.341 to include the language of ARM 12.11.342 and repeal ARM 12.11.342 for organizational purposes.

The department is proposing to amend ARM 12.11.341 and propose a new rule in efforts to further prevent the spread of aquatic invasive mussels in Montana waters. In November 2016, larvae of aquatic mussels were confirmed in water samples from Tiber Reservoir, and suspected samples were found in Canyon Ferry Reservoir. The confirmed and suspected findings of invasive aquatic mussels comprise a grave threat to the waters and economic resources within the State of Montana. The department believes the quarantine measures proposed in the above-stated rules are necessary to prevent further spread of mussels into Montana waters.

7. 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: Fisheries Division, Attn: Beth Giddings, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail fwpexotics@mt.gov, and must be received no later than March 17, 2017.

8. Kaedy Gangstad or another hearing officer appointed by the department has been designated to preside over and conduct this hearing.

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

10. 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.

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

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

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

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

Certified to the Secretary of State February 6, 2017.

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

In the matter of the amendment of)
ARM 24.168.401 fees and)
24.168.2101 continuing education)
NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 10, 2017, at 10:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Optometry (board) no later than 5:00 p.m., on March 3, 2017, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlidsdopt@mt.gov (board's e-mail).

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

24.168.401 FEE SCHEDULE

(1) remains the same.

(2) Annual renewal

425 175

(3) through (5) remain the same.

AUTH: 37-1-131, 37-1-134, 37-10-202, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-10-302, MCA

REASON: The board has determined it is reasonably necessary to increase the annual renewal fee to comply with the provisions of 37-1-134, MCA, and ensure that board fees related to its program area provide the amount of money usually needed for the operation of the board for services.

In the last several years, the number of licensees has remained fairly constant, while expenses have increased in excess of revenue generated through license fees. Over the past five years, average board revenue has been \$39,000 annually, while expenditures have averaged \$48,000, leaving very little in cash reserves. In addition to the fee increase, the department and board will continue to seek and implement ways to reduce costs associated with board functions. The board notes that operation costs continue to increase and that several fixed costs are not board-controlled, such as rent, utilities, telephones, and the computer

system. The board has concluded that it is necessary to increase fees as proposed to adequately cover operating expenses and practice responsible fiscal planning.

The board estimates that the proposed fee increase will affect approximately 260 renewing licensees and increase annual revenue by \$13,000. The board last increased fees in April of 2005.

24.168.2101 CONTINUING EDUCATION REQUIREMENTS (1) through (3) remain the same.

(4) The board may conduct random audits of ~~20~~ up to 50 percent of all renewed licensees. It is the responsibility of each optometrist to maintain the optometrist's own records of participation and completion, and make them available upon request.

(a) and (b) remain the same.

AUTH: 37-1-319, 37-10-202, MCA

IMP: 37-1-141, 37-1-306, MCA

REASON: The board is amending this rule to allow flexibility in conducting continuing education random audits. Currently, the board is required to randomly audit 20 percent of all renewed licensees each reporting period. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdopt@mt.gov, and must be received no later than 5:00 p.m., March 17, 2017.

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

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

proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdopt@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.168.401 and 24.168.2101 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or to dlibsdopt@mt.gov.

9. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OPTOMETRY
DOUG KIMBALL, O.D., PRESIDENT

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

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

Certified to the Secretary of State February 6, 2017.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.87.1410 pertaining to) PROPOSED AMENDMENT
specifying the location of minimum)
scheduled face-to-face contacts)
within a home and community)
environment)

TO: All Concerned Persons

1. On March 9, 2017, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 March 1, 2017, 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, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.87.1410 HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), PROVIDER REQUIREMENTS (1) through (5) remain the same.

(6) The following requirements must be met by either the clinical lead, or the HSS-S, or both:

(a) remains the same.

(b) conduct a minimum of four scheduled contacts or sessions with the caregiver in each four-week period, two of which must be face-to-face within the home and community environment, excluding an office or facility, based on the needs of the caregiver and documented in the ITP; ~~and~~

(c) conduct a minimum of two scheduled face-to-face treatment sessions within the home and community environment, excluding an office or facility, with the youth in each four-week period, based on the needs of the youth and documented in the ITP; ~~and~~

(d) services provided above the minimum face-to-face contact requirements in (b) and (c) may be provided in an office or facility to further meet the identified

needs of the youth and the caregiver documented in the ITP. The duration of the contacts are not limited.

(7) and (8) remain the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.87.1410. This proposed amendment is necessary because it has been brought to the department's attention that there is confusion regarding the location in which the minimum face-to-face contacts may be held. Home Support Services (HSS) are in-home family support services for youth and caregivers focused on the reduction of behaviors that interfere with the youth's ability to function in the family and natural community. The department is amending this rule to specify the location in which these contacts for HHS may be held.

ARM 37.87.1410

The department is proposing to amend (6) of this rule to specify that minimum face-to-face contacts are provided within the home and community. A new (d) is being proposed which specifies that services provided above the minimum contact requirements in (b) and (c) may be provided in an office or facility location that is sufficient to meet the identified needs of the youth and caregiver as documented in the individualized treatment plan.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., March 17, 2017.

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

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

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

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

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

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

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

/s/ Jorge Quintana
Jorge Quintana, Attorney
Rule Reviewer

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

Certified to the Secretary of State February 6, 2017.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.38.104, 17.38.201A, 17.38.202,)	
17.38.207, 17.38.208, 17.38.211,)	(PUBLIC WATER SUPPLY)
17.38.215, 17.38.225, 17.38.234, and)	
17.38.271 pertaining to rules and)	
regulations governing public water)	
supply systems)	

TO: All Concerned Persons

1. On October 28, 2016, the Board of Environmental Review published MAR Notice No. 17-386 regarding a notice of proposed amendment of the above-stated rules at page 1900, 2016 Montana Administrative Register, Issue Number 20.
2. The board has amended the rules exactly as proposed.
3. No public comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

By: /s/ Joan Miles
 JOAN MILES
 Chairman

Certified to the Secretary of State, February 6, 2017.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 24.121.301 definitions,)	REPEAL
24.121.406 nonroutine applications,)	
24.121.601 licensure by examination,)	
24.121.603 licensure by credentialing)	
with an out-of-state license,)	
24.121.604 licensure equivalency for)	
professional education, 24.121.605)	
application for postsecondary school)	
licensure, 24.121.801 inspection -)	
school layout, 24.121.807 school)	
curricula, 24.121.1105 teacher-)	
training curriculum and teaching)	
methodology coursework,)	
24.121.1301 salons/booth rental, and)	
24.121.1509 implements,)	
instruments, supplies, and)	
equipment, and the repeal of)	
24.121.404 anonymous complaints)	

TO: All Concerned Persons

1. On December 23, 2016, the Board of Barbers and Cosmetologists (board) published MAR Notice No. 24-121-14 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 2396 of the 2016 Montana Administrative Register, Issue No. 24.

2. On January 17, 2017, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. One comment was received by the January 20, 2017, deadline.

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

COMMENT 1: Board counsel advised the board is without statutory authority to reduce the time for new salons to respond to inspection violations in ARM 24.121.1301(8). Because 37-31-312(3), MCA, allows new salons and shops a minimum of 30 days to respond to inspection violations, only allowing ten days would conflict with the statute.

RESPONSE 1: After considering the comment, the board is not proceeding with the proposed changes to ARM 24.121.1301(8).

4. The board has amended ARM 24.121.301, 24.121.406, 24.121.601, 24.121.603, 24.121.604, 24.121.605, 24.121.801, 24.121.807, 24.121.1105, and 24.121.1509 exactly as proposed.

5. The board has repealed ARM 24.121.404 exactly as proposed.

6. The board has amended ARM 24.121.1301 with the following changes, stricken matter interlined, new matter underlined:

24.121.1301 SALONS/BOOTH RENTAL (1) through (7) remain as proposed.

(8) A new salon or shop may be granted a temporary operating permit pending an initial inspection. No prior notice of the inspection is required. A temporary operating permit shall terminate and a license shall not be granted without board review, unless the salon or shop provides the board with a response within ten ~~30~~ days of the date of the inspection that indicates all the inspection violations have been corrected to the inspector's satisfaction. ~~If the scope of the correction requires additional time, the additional time must be approved by the inspector, but in no case shall the time be extended beyond 30 days of the date of the inspection.~~ If a temporary permit terminates, the salon or shop must cease operation until the application is granted by the board and a license issued. A subsequent temporary operating permit is not available unless the application times out pursuant to ARM 24.121.403 and a new application is filed.

(9) through (12) remain as proposed.

BOARD OF BARBERS AND
COSMETOLOGISTS
THAYNE ORTON, PRESIDENT

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

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

Certified to the Secretary of State February 6, 2017

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.138.3227 pertaining to onsite)
inspection of facilities)

TO: All Concerned Persons

1. On January 6, 2017, the Board of Dentistry (board) published MAR Notice No. 24-138-73 regarding the public hearing on the proposed amendment of the above-stated rule, at page 45 of the 2017 Montana Administrative Register, Issue No. 1.

2. On January 27, 2017, a public hearing was held on the proposed amendment of the above-stated rule in Helena. No comments were received by the February 3, 2017, deadline.

3. The board has amended ARM 24.138.3227 exactly as proposed.

BOARD OF DENTISTRY
DR. DAVID JOHNSON, D.D.S., PRESIDENT

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

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

Certified to the Secretary of State February 6, 2017

VOLUME NO. 57

OPINION NO. 1

CITIES AND TOWNS - Authority of city with self-government powers to enact an ordinance requiring background checks before firearm sales or transfers;
FIREARMS - Authority of city with self-government powers to enact an ordinance requiring background checks before firearm sales or transfers;
LOCAL GOVERNMENT - Authority of city with self-government powers to enact an ordinance requiring background checks before firearm sales or transfers;
CITY OF MISSOULA CHARTER - Article 1, section 1;
MISSOULA MUNICIPAL CODE - Chapter 9.60;
MONTANA CODE ANNOTATED - Title 7, chapter 1, part 1; sections 1-2-101, 7-1-111, -111(9), -113, 7-4-4306, 7-32-4305, 45-8-351, -351(1) -351(2), -351(2)(a), 53-21-166;
MONTANA CONSTITUTION OF 1972 - Article II, section 12; article X, section 6;
OPINIONS OF THE ATTORNEY GENERAL - 46 Op. Att'y Gen. No.13 (1996), 44 Op. Att'y Gen. No. 34 (1992), 42 Op. Att'y Gen. No. 8 (1987), 37 Op. Att'y Gen. No. 68 (1977);
UNITED STATES CONSTITUTION - Amendment II.

HELD: A city, town, or other local government entity with self-governing powers is prohibited by Montana state law from enforcing a local regulation or ordinance requiring background checks on firearm sales or transfers within its borders.

January 26, 2017

Speaker Austin Knudsen
P.O. Box 200400
Helena, MT 59620-0400

Dear Speaker Knudsen:

You have requested my opinion on a question which I have restated below:

Does Montana state law prohibit a city, town, or other local government entity with self-governing powers from enforcing a local regulation or ordinance requiring background checks on firearm sales and transfers within its boundaries?

On September 26, 2016, the Missoula City Council adopted an ordinance requiring that a transferee to any firearm transfer conducted within the city limits of Missoula submit to a background check, subject to certain exceptions. See Missoula Municipal Code Chapter 9.60. As Speaker of the House, you have asked for an Attorney General Opinion regarding whether a local government, including one with self-governing powers, can pass such an ordinance based on exceptions contained

within Mont. Code Ann. § 45-8-351(2)(a). You believe it is important to resolve this question of state law before the end of the 2017 Legislative Session because there is considerable interest in new legislation on this issue depending on my interpretation of the statute.

As stated in the purpose and intent section of the ordinance, the City of Missoula enacted the ordinance based on its belief that § 45-8-351(2) allows it to regulate the sale and transfer of firearms within its borders through mandatory background checks in order to prevent the possession of firearms by "convicted felons, adjudicated mental incompetents, illegal aliens and minors." It concluded that there is "broad consensus that felons, minors, and people adjudicated as mentally ill by a court should not possess firearms." The City's understanding is that this exception in subsection (2)(a) is sufficient to bypass any prohibition in subsection (1) that presumably restricts the City's authority on this issue.

The effect of the ordinance is that every firearm transfer, including the sale, gift or loan of a firearm, be subject to a background check. Exceptions are made for transfers involving immediate family members, transfers between collectors as defined in federal law, for antique firearms as defined in federal law, "temporary transfers" to prevent imminent death or great bodily harm, other "temporary transfers" taking place at shooting ranges, organized competitions, en route to hunting or trapping, and for transferees who hold a valid concealed weapons permit under Montana law. Any person violating the transfer regulations, including those classes not mentioned in Mont. Code Ann. § 45-8-351(2), would be guilty of a misdemeanor punishable by a fine of up to five hundred dollars and/or by imprisonment for not more than six months.

Your question can be answered through a straightforward statutory construction analysis. A primary rule of statutory interpretation requires courts to apply plain and unambiguous statutes according to their express terms. Mont. Code Ann. § 1-2-101. A court cannot amend, omit or insert terms of the statute. *Id.* "When the statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is no need to resort to extrinsic means of interpretation." *In re Marriage of Christian*, 295 Mont. 352, 356, 983 P.2d 966, 968 (1999); *State ex rel. Cobbs v. Montana Dep't of Social and Rehabilitation Servs.*, 274 Mont. 157, 162, 906 P.2d 204, 207 (1995) ("The Court is to effectuate the intent of the Legislature, and if the Legislature's intent can be determined from the plain meaning of the words used in a statute, the courts may not go further and apply any other means of interpretation."); *Ravalli County v. Erickson*, 2004 MT 35, ¶ 11, 320 Mont. 31, 85 P.3d 772 ("This Court has repeatedly held that the role of courts in applying a statute has always been to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted")

Two statutes answer your question. The first deals with restrictions on a self-governing local government's ability to exercise any power that applies to or affects the right to keep and bear arms. The second statute generally preempts any form of local government from regulating the sale or transfer of firearms.

First, Mont. Code Ann. § 7-1-111 denies certain powers to local government with self-governing powers. A charter form of government (like Missoula) possesses self-government powers and may exercise any power not prohibited by the constitution, law, or charter. Mont. Const. Art. X, § 6 (1972). Simply stated, a local government with self-government powers possesses the power, unless the power has been specifically denied. *D & F Sanitation Serv. v. City of Billings*, 219 Mont. 437, 444-45, 713 P.2d 977, 981-82 (1986); 46 Op. Att'y Gen. No. 13 (1996).

In determining whether a particular self-government power is authorized, numerous previous Attorney General's Opinions have engaged in a three-part analysis:

- (1) consult the local government's charter and consider constitutional ramifications;
- (2) determine whether the exercise is prohibited under the various provisions of Mont. Code Ann. title 7, chapter 1, part 1 or other statute specifically applicable to self-government units;
- (3) decide whether it is inconsistent with state provisions in an area affirmatively subjected to state control as defined by Mont. Code Ann. § 7-1-113.

See, e.g., 46 Op. Att'y Gen. No. 13 (1996); 44 Op. Att'y Gen. No. 34 at 140, 142 (1992); 37 Op. Att'y Gen. No. 68 at 272, 274 (1977).

The first level of analysis reveals no limitation on Missoula's authority to regulate firearm sales or transfers pursuant to its charter. The City of Missoula adopted its charter form of government in 1996, and amended it once in 2006. The charter itself does not mention any limitations relevant to the issue at hand, but it does state it "shall exercise all powers conferred upon Montana cities with self-government powers and shall have all powers not prohibited by the Constitution of the United States of America, the Montana Constitution, and the laws of the State of Montana or this Charter." See *City of Missoula Charter*, Article I, section 1. This is consistent with Article X, section 6 of the Montana Constitution.

The second level of analysis applies directly to your question. The powers of self-governing local government are specifically limited in Mont. Code Ann. § 7-1-111, which denies a local government:

- (9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

The expression "to keep or bear arms" as used in Mont. Code Ann. § 7-1-111(9) originates with the Second Amendment to the U.S. Constitution, which has been interpreted as an individual constitutional right. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010). The drafters of Montana's Constitution used the phrase "to keep or bear arms" in article

II, section 12, and added more explicit language to guarantee this fundamental right to individuals "in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned." The Montana Supreme Court has pointed out that much like other state constitutional rights, the right to keep and bear arms is not without its limits. *State v. Fadness*, 2012 MT 12, ¶ 31, 363 Mont. 322, 268 P.3d 17. However, those circumstances where this state right was limited were instances involving convicted felons, not law-abiding citizens looking to purchase, sell or transfer a firearm. See *id.*; *State v. Stroud*, 210 Mont. 58, 683 P.2d 459 (1984).

The next step is to determine whether a regulation on the sale or transfer of firearms "applies to or affects the right to keep or bear arms" as stated in Mont. Code Ann. § 7-1-111(9).¹ It is clear on its face that an ordinance requiring background checks for firearm sales or transfers within its borders "applies to or affects the right to keep and bear arms." Several cases from other states and federal courts clearly state that it does as well. *Andrews v. State*, 50 Tenn. 165, 178 (1871) ("The right to keep arms, necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair."); *Luis v. United States*, 136 S. Ct. 1086, 1098-99 (2016) ("Constitutional rights thus implicitly protect those closely related acts necessary to their exercise. . . . Without protection for these closely related rights, the Second Amendment would be toothless."). See also *Hill v. Colorado*, 530 U.S. 703, 745 (2000) (Scalia, J., dissenting) ("There comes a point . . . at which the regulation of action intimately and unavoidably connected with [a right] is a regulation of [the right] itself." The right to keep and bear arms, for example, "implies a corresponding right to obtain bullets necessary to use them," *Jackson v. City and County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014), and "to acquire and maintain proficiency in their use," *Ezell v. Chicago*, 651 F. 3d 684, 704 (7th Cir. 2011).

In other words, one cannot try to regulate the ability to acquire firearms (sale or transfer) without exercising power that applies to or affects the right to keep or bear arms. Therefore, the general prohibition in Mont. Code Ann. § 7-1-111(9) clearly places a broad limitation on the power of self-governing cities to enact any ordinance that regulates the sale and transfer of firearms. Based on this conclusion, the Missoula ordinance cannot be enforced.

To avoid the general prohibition on self-governing local governments exercising any power that applies to or affects the right to keep or bear arms, the City of Missoula looked elsewhere in Montana Code for authority to adopt the firearm transfer restrictions. As stated in its purpose and intent statement for the ordinance, the City of Missoula used the limited exceptions listed in Mont. Code Ann. § 45-8-351(2)(a).²

¹ The question answered in this Opinion is not whether any restrictions on firearm sales or transfers would be upheld as constitutional, but rather whether restrictions on firearm sales or transfers "appl[y] to or affect[] the right to keep or bear arms" in a way to trigger the prohibition in Mont. Code Ann. § 7-1-111(9).

² *The City of Helena v. Yetter* (decided in the First Judicial District and not in Missoula County) 1993 Mont. Dist. LEXIS 172, raises serious concerns about

These listed exceptions apply to a broad limitation on a local government's ability to pass or enforce ordinances regarding the sale or transfer of firearms:

45-8-351. Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), a county, city, town, consolidated local government, or other local government unit may not prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2)(a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

The Montana Legislature passed HB 643 (Rep. Bob Thoft - Stevensville) in 1985, codified as Mont. Code Ann. § 45-8-351. This statute was slightly modified in the 1991 and 2011 Legislative Sessions, but the relevant portions of the law for purposes of this Attorney General Opinion have remained unchanged since 1985. There is only one previous Attorney General Opinion regarding this statute, which is not instructive on your question.³

whether a city with self-governing powers can rely on the exceptions within Mont. Code Ann. § 45-8-351(2). However, the City of Missoula acknowledges that the limitations in Mont. Code Ann. § 45-8-351(1) apply to its own authority as a self-governing local government because it looked toward the exceptions to the general prohibitions on local government ordinance on firearms listed in Mont. Code Ann. § 45-8-351(2). In order to provide a thorough analysis, this Opinion shows how the ordinance is unenforceable based on two separate sections of the Montana Code Annotated.

³ In 1987, the Missoula City Attorney received an Attorney General Opinion on whether it could enforce a recently passed ordinance prohibiting the discharge of firearms within designated areas which lie outside the city limits but within five miles of the boundaries of the city. 42 Op. Att'y Gen. No. 8. The Opinion concluded that the City of Missoula could not enforce an ordinance prohibiting the discharge of weapons five miles outside of its borders as a health ordinance and enforced pursuant to the extraterritorial powers of the mayor as provided in Mont. Code Ann. § 7-4-4306. The Opinion did, however, sustain the City of Missoula's authority to enforce the ordinance within its own borders as provided by the narrow exceptions in Mont. Code Ann. § 45-8-351(2)(a).

Plainly interpreted, the Montana Legislature has prohibited all forms of local government from exercising any regulatory power over the purchase, sale or transfer of firearms. The narrow exceptions to this general rule in (2)(a) do not allow the regulation of purchases, sales or transfers of firearms; rather, the exceptions clearly pertain only to specific situations involving the use and possession of firearms.

Yet the City of Missoula expanded § 45-8-351(2)(a) to allow the city to regulate all sales and transfers within the city boundaries so as to prevent the possession of firearms by felons, people adjudicated as mentally ill⁴, minors and illegal aliens⁵. This dragnet approach on all gun sales or transfers within the City of Missoula's borders ignores the long-standing statutory prohibitions previously discussed.

To interpret subsection (2)(a) in such a way would allow the narrow exceptions to completely swallow the general prohibition--rendering subsection (1) meaningless and nullifying Mont. Code Ann. § 7-1-111(9)'s limitation of cities with self-governing powers. In order to give "effect to all" parts of the statute, a plain meaning interpretation of the statute as a whole could never support the City of Missoula's reasoning. See Mont. Code Ann. § 1-2-101. Even more troubling, the City of Missoula's interpretation of Mont. Code Ann. § 45-8-351 would allow a city to require registration of firearms within its boundaries if the stated intent of the regulation was to prevent the prohibited individuals from possessing firearms.

In the construction of a statute, the intention of the legislature is to be pursued if possible. Mont. Code Ann. § 1-2-102. The legislative record in this case likewise shows that the Legislature passed Mont. Code Ann. § 45-8-351 to specifically preempt all Montana local jurisdictions from passing regulations or ordinances addressing the sale or transfer of firearms.

HB 643 marked a dramatic reversal of state policy on local government involvement in firearm issues. It repealed Mont. Code Ann. § 7-32-4305, a long-standing state law that *authorized* cities and towns to regulate firearm sales. ("Control of firearms. The city or town council has power to prevent and suppress the sale of firearms and carrying of concealed weapons.") In its place, § 45-8-351 put a general *prohibition* on ordinances from any local government aimed at sales and transfers of firearms.

⁴ Montana does not report people who are adjudicated as mentally ill in our state courts to NICS because mental health records are confidential pursuant to Mont. Code Ann. § 53-21-166. No exception within the state law is made to provide for reporting these confidential records to the federal government. Therefore, a background check is unlikely to accurately give information regarding a mental health adjudication for people adjudicated within Montana.

⁵ In *Montana Immigrant Justice Alliance v. Bullock*, 2016 MT 104, the Montana Supreme Court struck down a law denying state services to individuals defined as "illegal aliens," because that term is unknown in federal law and unconstitutionally places in the hands of state agents immigration status decisions. The only other place in Montana Code where the term "illegal aliens" is used is in Mont. Code Ann. § 45-8-351(2)(a), which calls into question its enforceability.

The Legislature included only narrow exceptions to this new state preemption policy, and none of those specifically override subsection (1) or § 7-1-111(9).

The proponents left no ambiguity in their reasons for supporting HB 643. They had seen efforts around the country to ban handguns, register firearms, and place restrictions or taxes on the sale of firearms in several larger cities around the country. HB 643 reversed state law authorizing local regulation of firearms and created Montana state preemption of firearm regulation to ensure there were consistent laws within the state's borders. ("This bill provides for a standardization of firearm laws throughout the State of Montana based upon current and future statutes enacted in the Legislature. It makes null and void local ordinances that are more or less restrictive than current state law (such as a Morton Grove, Illinois Handgun Ban). A state firearms preemption law will prevent a hodgepodge effect of firearms laws within the state and create uniformity of firearm laws within Montana." - Louis J. Brune, NRA NW State Liaison). Hr'g on HB 634 House Judiciary, Feb. 14, 1985.

Most of the examples cited during the legislative debate on HB 643 focused on out-of-state efforts to regulate firearms, but there was one local example cited. In 1984, the City of Missoula considered passing a local ordinance regulating the possession of firearms on public property. While this specific issue of firearms in public places was addressed through the amendment process to HB 643, it was clear that the Legislature sought to apply these new restrictions to all cities in towns in Montana, including Missoula, to ensure state law preempted any local efforts at firearm sales and transfers. The purpose of HB 643 was clear--only the state should decide how firearm purchases, sales and transfers should be regulated, if at all. In other words, the regulation of the sale and transfer of firearms is an area affirmatively subjected to state control as defined by Mont. Code Ann. § 7-1-113, which means Missoula's ordinance also is barred by the third step in the three-part test to determine whether a particular self-government power is authorized.

Nothing in this opinion should be construed to limit a local government's authority to regulate firearms as expressly authorized in (2)(a), including ordinances regulating the discharge of firearms, preventing and suppressing the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors. But to extend those exceptions into areas where the Legislature sought to prohibit local government interference with a fundamental right is not an appropriate use of any local government's authority.

THEREFORE, IT IS MY OPINION:

A city, town, or other local government entity with self-governing powers is prohibited by Montana state law from enforcing a local regulation or ordinance requiring background checks on firearm sales or transfers within its borders.

Sincerely,

TIMOTHY C. FOX
Attorney General

tcf/jb/jym

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 September 30, 2016. This table includes those rules adopted during the period June 30, 2016, through September 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 September 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 either the 2016 or 2017 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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- 24.156.501 and other rules - Renewal Dates and Requirements - Definitions - Medical Student's Supervision and Permitted Activities - Internship - Fee Schedule - Revocation or Suspension Proceedings - Unprofessional Conduct - Application for Licensure - Professional Conduct and Standards of Professional Practice - Application for

Physician Assistant License - Supervision of Physician Assistant - Chart Review - Continuing Education and Refresher Requirements - Medical Direction - Application for Temporary Non-Disciplinary Physician License - Application for Physician Licensure in Another State Via Interstate Compact - Post-Graduates-Supervision and Permitted Activities - Board Meetings - Medical Schools - Intern's Scope of Practice - Residency - Resident's Scope of Practice - Temporary License - Reinstatement - License Requirement - Application for a Telemedicine License - Fees - Failure to Submit Fees - Issuance of a Telemedicine License - Renewals - Effect of Determination That Application for Telemedicine License Does Not Meet Requirements - Sanctions - Obligation to Report to Board - Board Policy - Maintaining NCPPA Certification, p. 49

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in January 2017 appear. Vacancies scheduled to appear from March 1, 2017 through May 31, 2017, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of February 1, 2017.

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

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2017

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Chiropractors (Labor and Industry)			
Dr. Amy Ann Pezo Helena	Governor	reappointed	1/27/2017 1/1/2020
Qualifications (if required): Chiropractor			
Board of Dentistry (Labor and Industry)			
Mr. Jim Corson Billings	Governor	reappointed	1/27/2017 4/1/2022
Qualifications (if required): Public Representative			
Board of Physical Therapy Examiners (Labor and Industry)			
Mr. Pat Goodover Great Falls	Governor	Van Hook	1/6/2017 7/1/2018
Qualifications (if required): Member of the general public who is not a physician or physical therapist			
Board of Speech-Language Pathologists and Audiologists (Labor and Industry)			
Mrs. Rachel Stansberry Lewistown	Governor	Dinstel	1/6/2017 12/31/2019
Qualifications (if required): Speech-Language Pathologist			
Information Technology Board (Administration)			
Rep. Mike Milburn Cascade	Governor	Darkenwald	1/1/2017 1/1/2017
Qualifications (if required): Architectural Historian			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2017

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Interstate Oil Compact Commission (Natural Resources and Conservation)			
Mr. Ronald Efta Wibaux	Governor	not listed	1/27/2017 1/1/2021
Qualifications (if required): Official Representative			
Mr. Jim Halvorson Billings	Governor	not listed	1/27/2017 1/1/2021
Qualifications (if required): Associate Official Representative			
Judicial Nomination Commission (Judicial Branch)			
Sen. Lane Larson Billings	Governor	reappointed	1/1/2017 1/1/2021
Qualifications (if required): Lay member			
Montana Tax Appeal Board (Administration)			
Ms. Valerie Balukas Helena	Governor	reappointed	1/1/2017 1/1/2023
Qualifications (if required): Public Representative			
Pulse Crop Commodity Advisory Committee (Agriculture)			
Mr. Paul Adler Kanning Flaxville	Governor	Zerbe	1/27/2017 2/1/2020
Qualifications (if required): producer			
Ms. Jullien Street Chester	Governor	Doheney	1/27/2017 2/1/2020
Qualifications (if required): producer			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2017

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Small Business Compliance Assistance Advisory Council (Environmental Quality)			
Ms. Michelle Lee Bryan Missoula	Governor	reappointed	1/6/2017 5/1/2019
Qualifications (if required): Not an owner or representative of an owner of small business stationary sources			
Ms. Diana Vanek Bozeman	Governor	reappointed	1/6/2017 5/1/2019
Qualifications (if required): Not an owner or representative of an owner of small business stationary sources			
State Lottery Commission (Administration)			
Mrs. Jessica Louise Kynett Livingston	Governor	Difonza	1/27/2017 1/1/2021
Qualifications (if required): 5 years' experience as a law enforcement officer			
Mr. Wilbur Rehmann Helena	Governor	reappointed	1/27/2017 1/1/2021
Qualifications (if required): Public Representative			
State Tribal Economic Development Commission (Commerce)			
Mr. Carl Kipp Browning	Governor	Old Chief	1/27/2017 7/1/2019
Qualifications (if required): Blackfeet National Alternate Member			
Mr. Harold Stone Crow Agency	Governor	Hill	1/27/2017 7/1/2018
Qualifications (if required): Crow Tribe Alternate Member			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2017

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Teachers' Retirement System Board (Administration)			
Mr. Jeffrey Greenfield Shepherd	Governor	Ryan	1/1/2017 7/1/2021
Qualifications (if required): Active member of the retirement system			
Western Interstate Energy Board (Environmental Quality)			
Mr. Jeff Blend Helena	Governor	not listed	1/27/2017 1/1/2021
Qualifications (if required): Board Member			
Mr. Craig Jones Helena	Governor	not listed	1/27/2017 1/1/2021
Qualifications (if required): Board Member			
Youth Justice Council (Justice)			
Ms. Abigail Helland Bozeman	Governor	Shevalier	1/6/2017 3/1/2018
Qualifications (if required): Under the age of 24			

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2017 THROUGH MAY 31, 2017

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Architects and Landscape Architects (Labor and Industry) Mr. Bayliss Ward, Bozeman Qualifications (if required): Architect</p>	Governor	4/1/2017
<p>Board of Clinical Laboratory Science Practitioners (Labor and Industry) Ms. Alison Mizner, Kalispell Qualifications (if required): Clinical Laboratory Practitioner</p>	Governor	4/16/2017
<p>Board of County Printing (Administration) Commissioner Carol Brooker, Plains Qualifications (if required): County Commissioner</p>	Governor	4/1/2017
<p>Commissioner Laura Obert, Townsend Qualifications (if required): County Commissioner</p>	Governor	4/1/2017
<p>Mr. Scott Turner, Worden Qualifications (if required): printing industry</p>	Governor	4/1/2017
<p>Mr. Roger Wagner, Nashua Qualifications (if required): general public</p>	Governor	4/1/2017
<p>Mr. Jim Strauss, Great Falls Qualifications (if required): Printing Industry</p>	Governor	4/1/2017
<p>Board of Dentistry (Labor and Industry) Rep. James Madison, Jefferson City Qualifications (if required): public representative over 55 years of age</p>	Governor	3/29/2017

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2017 THROUGH MAY 31, 2017

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Dentistry (Labor and Industry) cont. Mr. Cliff Christenot, Libby Qualifications (if required): denturist	Governor	3/29/2017
Dr. David Johnson, Great Falls Qualifications (if required): dentist	Governor	3/29/2017
Ms. Lorraine Merrick, Helena Qualifications (if required): dental hygienist	Governor	3/29/2017
Ms. Jennifer Porter, Bozeman Qualifications (if required): dental hygienist	Governor	3/29/2017
Board of Directors of the State Compensation Insurance Fund (Administration) Sen. Lynda Moss, Billings Qualifications (if required): Public Representative	Governor	4/28/2017
Mr. Roger Wagner, Nashua Qualifications (if required): Policy Holder	Governor	4/28/2017
Mr. Bruce Mihelish, Lolo Qualifications (if required): Private Enterprise and Executive Management experience in an Insurance Company	Governor	4/28/2017
Mr. Richard Miltenberger, Helena Qualifications (if required): Private Enterprise and Executive Management experience in an Insurance Company	Governor	4/28/2017

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2017 THROUGH MAY 31, 2017

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Hail Insurance (Agriculture) Mr. Gary Gollehon, Brady Qualifications (if required): Public Representative</p>	Governor	5/1/2017
<p>Board of Livestock (Livestock) Ms. Linda Nielsen, Nashua Qualifications (if required): cattle producer</p>	Governor	3/1/2017
<p>Mr. Ed Waldner, Chester Qualifications (if required): swine producer</p>	Governor	3/1/2017
<p>Mr. Jeffery Lewis, Corvallis Qualifications (if required): dairy producer</p>	Governor	3/1/2017
<p>Mrs. Nina Baucus, Wolf Creek Qualifications (if required): Cattle Producer</p>	Governor	3/1/2017
<p>Board of Massage Therapy (Labor and Industry) Mrs. Anne Gergen, Broadus Qualifications (if required): Massage Therapist</p>	Governor	5/6/2017
<p>Board of Nursing Home Administrators (Labor and Industry) Ms. Carla Neiman, Plains Qualifications (if required): representative of an institution caring for chronically ill or aged</p>	Governor	5/28/2017
<p>Mr. Joshua Brown, Bozeman Qualifications (if required): nursing home administrator</p>	Governor	5/28/2017

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2017 THROUGH MAY 31, 2017

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Optometry (Labor and Industry) Dr. Marcus Kelley, Helena Qualifications (if required): optometrist	Governor	4/3/2017
Board of Plumbers (Labor and Industry) Ms. Donna L Paulson, Great Falls Qualifications (if required): Public Representative	Governor	5/4/2017
Board of Real Estate Appraisers (Labor and Industry) Mr. Thomas G. Stevens, Missoula Qualifications (if required): Real Estate Appraiser	Governor	5/1/2017
Mr. George Simek, Billings Qualifications (if required): Real Estate Appraiser	Governor	5/1/2017
Board of Realty Regulation (Labor and Industry) Ms. Jessie Lundberg, Missoula Qualifications (if required): Public Representative	Governor	5/1/2017
Community First Choice Development and Implementation Council (Public Health and Human Services) Ms. Diana Tavary, Helena Qualifications (if required): none specified	Director	5/1/2017
Ms. Claudia Clifford, Helena Qualifications (if required): none specified	Director	5/1/2017
Mr. Quentin Schroeter, Helena Qualifications (if required): none specified	Director	5/1/2017

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2017 THROUGH MAY 31, 2017

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Community First Choice Development and Implementation Council (Public Health and Human Services) cont.		
Mr. Travis Hoffman, Missoula Qualifications (if required): none specified	Director	5/1/2017
Ms. Glenna Dreese, Florence Qualifications (if required): none specified	Director	5/1/2017
Ms. Ashli Gross, Missoula Qualifications (if required): none specified	Director	5/1/2017
Ms. Meg Traci, Missoula Qualifications (if required): none specified	Director	5/1/2017
Ms. Dawna Brinkel, Bozeman Qualifications (if required): none specified	Director	5/1/2017
Ms. Kris Carlson, Kalispell Qualifications (if required): none specified	Director	5/1/2017
Ms. Kelly Reynolds, Missoula Qualifications (if required): none specified	Director	5/1/2017
Ms. Sue Neff, Butte Qualifications (if required): none specified	Director	5/1/2017
Ms. Tiffany Metzler, Billings Qualifications (if required): none specified	Director	5/1/2017

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2017 THROUGH MAY 31, 2017

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Community First Choice Development and Implementation Council (Public Health and Human Services) cont. Mr. Randy Morigeau, Polson Qualifications (if required): none specified	Director	5/1/2017
Ms. Kimberly Schwartz, Great Falls Qualifications (if required): none specified	Director	5/1/2017
Mr. John Stevenson, Great Falls Qualifications (if required): none specified	Director	5/1/2017
Ms. Sheila Thompson, Missoula Qualifications (if required): none specified	Director	5/1/2017
Ms. Jerilee Wilkerson, Helena Qualifications (if required): none specified	Director	5/1/2017
Montana Cherry Commodity Advisory Committee (Agriculture) Ms. Tanya Campbell, Qualifications (if required): none specified	Governor	5/17/2017
Cody Herring, Bigfork Qualifications (if required): none specified	Governor	5/17/2017
Montana Heritage Commission (Commerce) Mr. Andy Poole, Helena Qualifications (if required): Public At-Large	Governor	5/1/2017

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2017 THROUGH MAY 31, 2017

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Heritage Commission (Commerce) cont. Ms. Cynthia Andrus, Bozeman Qualifications (if required): Member of Tourism Advisory Council	Governor	5/1/2017
Dr. Timothy Lehman, Billings Qualifications (if required): Montana Historian	Governor	5/1/2017
Off-Highway Vehicle Advisory Committee (OHVAC) (Fish, Wildlife and Parks) Ms. Christina Miller, Billings Qualifications (if required): Agency Advisor	Director	3/1/2017
Mr. Russ Ehnes, Great Falls Qualifications (if required): none specified	Director	3/1/2017
Mr. Mark Klemencic, Great Falls Qualifications (if required): none specified	Director	3/1/2017
Ms. Jody Loomis, Helena Qualifications (if required): none specified	Director	3/1/2017
Ms. Jennifer Schofield, East Helena Qualifications (if required): none specified	Director	3/1/2017
Ms. Charlotte Snyder, Helena Qualifications (if required): none specified	Director	3/1/2017
Ms. Erin Proctor, Helena Qualifications (if required): none specified	Director	3/1/2017

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2017 THROUGH MAY 31, 2017

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Potato Commodity Advisory Committee (Agriculture) Mr. Dan Lake, Ronan Qualifications (if required): Potato Producer	Director	3/1/2017
Mr. Dave Cottom, Dillon Qualifications (if required): Potato Producer	Director	3/1/2017
Public Employees' Retirement Board (Administration) Ms. Melissa Strecker, Missoula Qualifications (if required): public employee/active in retirement system	Governor	4/1/2017
Snowmobile Advisory Committee (SAC) (Fish, Wildlife and Parks) Ms. Christina Miller, Billings Qualifications (if required): Agency Advisor	Director	3/1/2017
Mr. Wes Fehrer, Bozeman Qualifications (if required): none specified	Director	3/1/2017
Ms. Racene Friede, Missoula Qualifications (if required): none specified	Director	3/1/2017
Mr. Scott Herzog, Great Falls Qualifications (if required): none specified	Director	3/1/2017
Mr. Jason Howell, West Yellowstone Qualifications (if required): none specified	Director	3/1/2017

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2017 THROUGH MAY 31, 2017

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Snowmobile Advisory Committee (SAC) (Fish, Wildlife and Parks) cont. Mr. Don Phillips, Missoula Qualifications (if required): none specified	Director	3/1/2017
Mr. Nate Gassman, Libby Qualifications (if required): none specified	Director	3/1/2017
Mr. Seth McArthur, Helena Qualifications (if required): Agency Advisor	Director	3/1/2017
State Employee Charitable Giving Campaign Advisory Council (Administration) Ms. Jessica Barnes, Helena Qualifications (if required): Employee representative	Governor	3/1/2017
Mr. Matthew Dale, Helena Qualifications (if required): Employee Representative	Director	3/1/2017
Ms. Marcia Armstrong, Helena Qualifications (if required): Employee Representative	Director	3/1/2017
Mr. Gary Owen, Great Falls Qualifications (if required): Federation Representative	Director	3/1/2017
Ms. Pamela Carlson, Helena Qualifications (if required): Federation Representative	Director	3/1/2017
Ms. Kristen Wrzesinski, Helena Qualifications (if required): Employee Representative	Director	3/1/2017

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2017 THROUGH MAY 31, 2017

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Charitable Giving Campaign Advisory Council	(Administration) cont.	
Ms. Gloria Soja, Helena Qualifications (if required): Employee Representative	Director	3/1/2017
Mr. Bill Crane, Helena Qualifications (if required): Federation Representative	Director	3/1/2017
Ms. Shelley Clinch, Helena Qualifications (if required): Employee Representative	Director	3/1/2017
Ms. Diane Larson, Helena Qualifications (if required): Employee Representative	Director	3/1/2017
Mr. Mike Manion, Helena Qualifications (if required): Employee Representative	Director	3/1/2017
Mr. Frank Clinch, Helena Qualifications (if required): Employee Representative	Director	3/1/2017
Ms. Hope Stockwell, Helena Qualifications (if required): Employee Representative	Director	3/1/2017