ISSUE NO. 5

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the adoption of NEW RULE I pertaining to closure or relocation of bank branch and the amendment of ARM 2.60.203, 2.60.204, 2.60.501, and 2.60.904 pertaining to certificate of authorization, procedural rules, deposit liability, and incorporation for state-chartered banks	)))))))	NOTICE OF PROPOSED ADOPTION AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Administration proposes to adopt and amend the above-stated rules.

2. The Department of Administration 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 Administration no later than 5:00 p.m. on April 3, 2017, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail banking@mt.gov.

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

NEW RULE I ADOPTION OF FORM FOR NOTICE TO PUBLIC OF BANK BRANCH CLOSURE OR RELOCATION (1) The department adopts by reference the Notice to Public of Proposed Closure or Relocation of Bank Branch, effective August 1, 2016. This form is required to notify the public of a proposed closure or relocation of a bank branch and to provide an opportunity for protest. This form is available at the division's website: http://banking.mt.gov/Home/Forms#164912240-banks-and-trust-companies.

AUTH: 32-1-218, MCA
IMP: 32-1-202, 32-1-218, MCA

STATEMENT OF REASONABLE NECESSITY: The department is adopting this form by reference because, while the form has been used for several years by the department, it has not been formally adopted by rule.

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

2.60.203 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE-CHARTERED BANK (1) remains the same.

(a) the Interagency Charter and Federal Deposit Insurance Application (Expiration Date: ~~6/20/2013~~ August 31, 2019) as the form that shall be completed when applying for a certificate of authorization; and

(b) the Interagency Biographical and Financial Report (Expiration Date: ~~4/30/2014~~ April 30, 2017) for use by individuals in conjunction with the Interagency Charter and Federal Deposit Insurance Application. The application and biographical and financial report are available at the Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546, or on the division web site located at http://banking.mt.gov/Home/Forms#164912240-banks-and-trust-companies.

(2) through (5) remain the same.

AUTH: 32-1-203, MCA
IMP: 32-1-203, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: As part of its required biennial review of rules, the Department of Administration has identified necessary changes identified in these proposed amendments including updated versions of forms and model rules.

STATEMENT OF REASONABLE NECESSITY: The division proposes to amend this rule to reflect the most current forms provided for banks by the Federal Deposit Insurance Corporation and to provide a more direct link to the forms.

2.60.204 PROCEDURAL RULES FOR DISCOVERY AND HEARING

(1) The State Banking Board and the division adopt and incorporate by reference the following Attorney General's model rules ~~dated June 30, 2009~~ in effect February 27, 2017, ~~by reference, as stated in~~ ARM 1.3.101, ARM 1.3.102, ARM 1.3.201, ARM 1.3.202, ARM 1.3.211 through ARM 1.3.224, and ARM 1.3.226 through ARM 1.3.233. These rules may be found at sos.mt.gov. Prehearing discovery procedures shall be allowed in the same manner as specified under the Montana Rules of Civil Procedure relative to district court actions. The time period established in discovery may be shortened at the discretion of the board.

(2) and (3) remain the same.

AUTH: 32-1-203, MCA
IMP: 32-1-203, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to amend this rule to reflect the most current model rules from the Attorney General and where they may be accessed.

2.60.501 STATE BANK ORGANIZED FOR PURPOSE OF ASSUMING DEPOSIT LIABILITY OF ANY CLOSED BANK (1) All provisions of ARM 2.60.202 and 2.60.203, application procedures, apply except ~~(1)(c) of~~ 2.60.203(3), summary

of evidence demonstrating reasonable public necessity and demand for a new bank~~; and (4) of 2.60.203, notification to applicants to perfect application~~. The provisions of ARM 2.60.302 through 2.60.304 also apply.

(2) and (3) remain the same.

(4) Details of the proposed purchase along with a copy of the purchase and assumption agreement ~~and an application fee of $1,500 will~~ must be submitted to the Division of Banking and Financial Institutions prior to submitting a bid for the closed bank.

(5) remains the same.

AUTH: 32-1-204, MCA
IMP: 32-1-204, MCA

STATEMENT OF REASONABLE NECESSITY: There is no longer a subsection (c) to ARM 2.60.202(1). And ARM 2.60.203(4) does not pertain to notification to applicants to perfect application. In fact, there is no longer a section in ARM 2.60.203 addressing notification to applicants to perfect application, so these references must be removed. The fee of $1,500 is being deleted because the current application fee for a certificate of authority for a state-chartered bank is $10,000. That fee is located in ARM 2.60.203(2).

2.60.904 DECISION OF STATE BANKING BOARD; INCORPORATION

(1) through (5) remain the same.

(6) The State Banking Board's approval shall be specifically conditioned on:

(a) the commissioner's approval of the subsequent merger; and

(b) the new institution being accepted for deposit insurance by the Federal Deposit Insurance Corporation.

(7) remains the same.

AUTH: 32-1-218, MCA
IMP: 32-1-109, 32-1-202, 32-1-204, 32-1-205, 32-1-218, 32-1-302, MCA

STATEMENT OF REASONABLE NECESSITY: All banks chartered in the state of Montana are required by 32-1-203, MCA, to have Federal Deposit Insurance Corporation (FDIC) insurance. ARM 2.60.304 sets forth the requirement set by the State Banking Board to require all commercial banks in Montana to be accepted by the FDIC for deposit insurance. This requirement ensures the deposit insurance is in place before a new bank can begin business.

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., April 10, 2017.

6. 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 the person listed in 5 above no later than 5:00 p.m., April 10, 2017.

7. If the Division of Banking and Financial Institutions 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 five persons based on the 47 existing state-chartered banks.

8. An electronic copy of this proposal notice is available through the department's web site at http://doa.mt.gov/administrativerules. The department 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 if a discrepancy exists 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 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 Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the State Banking Board. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding board rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

11. The department has determined that under 2-4-111, MCA, the proposed rule adoption and rule amendments will not significantly and directly affect small businesses.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

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

Certified to the Secretary of State February 27, 2017.

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

In the matter of the amendment of ARM 24.174.1712 pertaining to the prescription drug registry fee	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 31, 2017, at 10:00 a.m., a public hearing will be held in Room 496, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 Pharmacy (board) no later than 5:00 p.m., on March 24, 2017, to advise us of the nature of the accommodation that you need. Please contact Marcie Bough, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2344; or dlibsdpha@mt.gov (board's e-mail).

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

24.174.1712 PRESCRIPTION DRUG REGISTRY FEE (1) remains the same.

(2) ~~The fee shall be paid annually to the board.~~ The fee is considered a renewal fee and shall be collected by the department when the license is renewed.

(3) ~~Upon payment of the fee, the board shall issue authorized prescribers and dispensers a controlled substances registration.~~ A licensee who is not authorized to prescribe or dispense controlled substances is not required to pay the fee.

(4) The annual prescription drug registry fee is ~~$15~~ 30.

AUTH: 37-1-134, 37-7-1511, 37-7-1512, MCA
IMP: 37-1-134, 37-1-141, 37-7-1511, 37-7-1512, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align with revisions made in the 2015 Legislature regarding who pays the Montana Prescription Drug Registry (MPDR) fee and the fee amount, and to clarify how the fee is collected. In addition, the 2017 Legislature further extended the authority for the board to collect the MPDR fee through June 2019.

In 2015, the Montana Legislature, through Senate Bill 7, amended 37-7-1511, MCA, to clarify who pays the MPDR fee, increase the annual fee from $15 to $30,

and extend the authority to collect the MDPR fee to June 30, 2017. In September 2015, collection of the annual MPDR fee was integrated into the department's existing online and paper license renewal processes to improve efficiencies and utilize existing department procedures. Such revisions also reflected stakeholder and licensee feedback to remove the separate MPDR fee invoice that had been used in 2013 and 2014.

In 2017, the Legislature, through Senate Bill 56, amended 37-7-1511, MCA, to further extend the MPDR fee termination date to June 30, 2019, thus providing authority for the board to continue collecting the MPDR fee.

The amendment clarifies that the annual MPDR fee is collected when a licensee renews their license and that the fee is to be considered a renewal fee. Such clarification helps address how MPDR fees are processed within the department. In addition, the current rule incorrectly states that the fee authorizes access to the registry. Instead, access is granted to licensees authorized in 37-7-1506, MCA, who complete the online MPDR registration process. Therefore, the board is removing the language in (3) and replacing it with information indicating who is not required to pay the MPDR fee, as indicated in 37-7-1511, MCA.

The MPDR is funded through a combination of fees and federal grants for an operating budget of approximately $468,000 in Fiscal Year (FY) 2017. The board expects to continue receiving MPDR fee payments from a combination of board licensees who renew either annually or biennially. The board estimates that approximately 8,000 licensees per year will be impacted by the fee increase, and result in an estimated annual revenue increase of $120,000. The average revenue projection accounts for an estimated 20 percent of licensees continuing to attest that the fee does not apply to them and therefore do not pay the MPDR fee at the time of license renewal.

The MPDR fee is currently assessed to the following license types at time of license renewal: pharmacist, physician, resident physician, physician assistant, dentist, optometrist, podiatrist, naturopathic physician, and advance practice registered nurse with prescriptive authority.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

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 Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2344, or e-mail to dlibsdpha@mt.gov, and must be received no later than 5:00 p.m., April 7, 2017.

5. An electronic copy of this notice of public hearing is available at pharmacy.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 Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2344; e-mailed to dlibsdpha@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, apply and have been fulfilled. The primary bill sponsor was contacted on January 4, 2017, by e-mail, and on January 5, 2017, by telephone.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.174.1712 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; facsimile (406) 841-2344; or to dlibsdpha@mt.gov.

9. Marcie Bough, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY
STARLA BLANK, RPh
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 27, 2017.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.401 department of livestock animal health division fees; 32.3.401 definitions; 32.3.435 testing within the DSA; 32.3.455 brucellosis tests to be reported	))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

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

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m., March 31, 2017, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N. Roberts St., Room 304, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9525; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: MDOLcomments@mt.gov.

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

32.2.401 DEPARTMENT OF LIVESTOCK ANIMAL HEALTH DIVISION FEES (1) through (4)(b) remain the same.

(c) SV-7 - large animal cvi book ~~24.00~~ 32.00

(d) SV-7A - cvi convoy replica book ~~25.00~~ 38.00

(e) through (l) remain the same.

AUTH: 81-2-102, MCA
IMP: 81-1-102, 81-2-502, 81-2-704, MCA

REASON: These price increases are due to an increase in printing costs, postage and wages for handling, and data entry of these forms. Number of forms ordered will determine cost of forms; the less ordered the higher the cost.

SV-7 printing cost was $5.57; new printing cost is $8.48. Postage was at $6.00 per book; the current estimate for postage is $6.61. Handling fee was $2.49 based on salary of $14.95. The current salary is $15.48. Data entry fee at 2 minutes was $8.49 based on salary of $14.95. The current ADT salary is $14.00. The department issued 685 in 2016.

SV-7a printing cost was $31.21; new printing cost is $27.40. Postage was at $6.00 per book. The current estimate for postage is $6.61. Handling fee was $2.49 based

on salary of $14.95. The current salary is $15.48. This is a field duplicate form; there is no data entry. The department issued 17 in 2016.

Approximately 439 large animal veterinarians will be affected.

The department proposes to amend the above-stated rule to ensure fees are commensurate with the costs as required by 81-1-102(2), MCA.

32.3.401 DEFINITIONS (1) through (5)(c) remain the same.

(6) "Brucellosis" is the contagious, infectious, and communicable disease of animals and humans caused by bacteria of the genus brucella, brucella abortus, brucella suis, or brucella melitensis, which are referred to in these rules collectively as brucella organisms or individually as a brucella organism.

~~(a) Brucellosis is also known as bangs disease and undulant fever.~~

(7) A "~~brucellosis surveillance herd management plan" (herd plan)~~ brucellosis prevention and surveillance herd management agreement (management agreement)" is a document outlining brucellosis mitigation and surveillance practices that will be or have been instituted by an individual designated surveillance area producer or DSA production unit.

(a) To reflect these practices, a "~~herd plan~~ management agreement" may also outline variances to ~~some testing~~ Montana brucellosis requirements.

(b) A "~~herd plan~~ management agreement" is mutually agreed upon by the producer and the Department of Livestock and should be reviewed ~~annually~~ every five years or earlier if requested by the herd owner or DOL.

(8) through (20) remain the same.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110, 81-2-111, MCA

REASON: The department proposes to remove unnecessary language in (6)(a). Other changes will make the language consistent with the current name of a "Management Agreement" and reflect that variances may be granted to requirements other than testing alone. For example, some producers do not have working facilities within the DSA and therefore must apply identification to heifer calves at the home ranch (outside of the DSA). Frequently, this is done at the time of calfhood vaccination.

In response to the Legislative Audit Division's recommendation to change the requirement for annual renewal, the department proposes to strike the word "annually" in (7)(b) and add language accordingly. Annual renewal of a Management Agreement is seldom necessary because management practices as outlined rarely change from year to year and can be difficult for the department to accomplish in a timely manner that is also convenient for the producer. Renewal of agreements at the request of the herd owner (or their representative), or the Department of Livestock due to changes in management practices, risk, epidemiologic investigations, or regulation is a more reasonable approach.

32.3.435 TESTING WITHIN THE DSA (1) through (2) remain the same.

(3) Other variances or exceptions to requirements will be considered on an individual basis by the administrator based on a ~~brucellosis surveillance herd management plan~~ brucellosis prevention and surveillance herd management agreement.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110, 81-2-111, MCA

REASON: The department proposes to amend this rule to make the language consistent with the definition in ARM 32.3.401(7).

32.3.455 BRUCELLOSIS TESTS TO BE REPORTED (1) The results of all brucellosis tests of Montana origin ~~made on~~ animals shall be reported ~~in writing on an approved form~~ by the person making such tests to the state veterinarian within seven days after test results have been determined.

AUTH: 81-2-102, MCA
IMP: 81-2-101 MCA

REASON: The department proposes to amend this rule to clarify that only brucellosis test results on Montana origin animals must be reported within seven days. Test results from the Montana Veterinary Diagnostic Laboratory are reported electronically in the Vetstar Animal Disease Diagnostic System (VADDS). Electronic or paper reporting of testing performed at an out-of-state laboratory would also be acceptable. A positive brucellosis result on any animal including an out-of-state animal performed in Montana is required to be reported per 81-2-107, MCA and ARM 32.3.104. Negative test results on out-of-state origin animals would not need to be reported.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to Department of Livestock, 301 N. Roberts St., Room 306, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., April 7, 2017.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. April 7, 2017.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a

public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 78 based upon approximately 439 large animal veterinarians and approximately 337 producers in the DSA.

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

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

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

Certified to the Secretary of State, February 27, 2017.

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

In the matter of the adoption of New Rules I through X pertaining to the creation and administration of the Senior Farmers' Market Nutrition Program (SFMNP)	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On March 30, 2017, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed adoption of 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 March 22, 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 rules as proposed to be adopted provide as follows:

NEW RULE I SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP): PURPOSE (1) The purpose of this subchapter is to provide a framework under which the department administers the SFMNP enacted under Section 4402 of the Farm Security and Rural Investment Act of 2002, codified at 7 U.S.C. 3007, and operated by the United States Department of Agriculture under the authority granted to it through 7 CFR 249.

AUTH: 52-1-103, 52-3-504, MCA
IMP: 52-3-102, 52-3-505, MCA

NEW RULE II SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP): DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this chapter:

(1) "Adverse Action" means an action taken by the department in the administration of the SFMNP having a negative impact on a farmer, participant, or local agency that has an agreement.

(2) "Agreement" means a written legal document or contract binding the farmer, participant, or local agency and the local agency or department to designated terms and conditions.

(3) "Application" means a written request submitted on a form provided by the department or local agencies indicating interest in participating in SFMNP either as a senior as defined in (14) or a farmer as defined in (9).

(4) "Bulk purchase program" means a program model in which bulk quantities of certain produce items are purchased directly from authorized farmers by the local agency and are then equitably divided among and distributed directly to eligible SFMNP participants.

(5) "Coupon" means a voucher or other negotiable financial instrument by which benefits are issued under the SFMNP.

(6) "Department" means the Department of Public Health and Human Services, Aging Services Bureau.

(7) "Disqualification" means the act of terminating the agreement of an authorized farmer, participant, or local agency for noncompliance with program requirements.

(8) "Eligible foods" means fresh, nutritious, unprocessed, unprepared, locally grown fruits, vegetables, honey, and herbs for human consumption.

(9) "Farmer" means an individual residing within Montana authorized by the department to sell eligible fruit and vegetables at a participating farmers' market to a participant at a farmers' market.

(10) "Local agency" means any nonprofit or local government agency that is contracted to certify an eligible participant, issue coupons, or arrange for distribution of eligible foods through a Bulk Purchase Program.

(11) "Locally grown" means grown in the state of Montana.

(12) "Participant" means a person or household who meets the eligibility requirements of the SFMNP and to whom coupons or bulk purchase have been issued.

(13) "Proxy" means an individual authorized by an eligible senior to act on the senior's behalf, including application for certification, receipt of SFMNP coupons, and use of SFMNP coupons at authorized outlets as long as the benefits are ultimately received by the eligible senior.

(14) "Senior" means an individual 60 years of age or older.

(15) "Senior Farmers' Market Nutrition Program (SFMNP)" means the Senior Farmers' Market Nutrition Program authorized by 7 U.S.C. 3007, and provided in 7 CFR 249.

(16) "SFMNP state plan" means the annual state plan for SFMNP that describes the manner in which the department intends to implement all aspects of program administration within its jurisdiction in accordance with 7 CFR 249.

(17) "Summer farmers' market" means an association of local farmers who assemble at a defined location for the purpose of selling their produce directly to consumers during the summer market season.

(18) "Violation" means an activity that is prohibited by participant, farmer, or local agency SFMNP agreement and 7 CFR 249.

AUTH: 52-1-103, 52-3-504, MCA

IMP: 52-3-102, 52-3-505, MCA

NEW RULE III SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP): PARTICIPANT ELIGIBILITY AND BENEFITS (1) A participant will be considered eligible for the SFMNP if the following criteria are met:

(a) the participant is a senior defined in [NEW RULE II];

(b) the participant income is at or below 185% of the annual federal poverty level;

(c) the participant resides within the local agency area contracted to service the SFMNP;

(d) the participant submits a completed current year's application through the contracted local agency in their area; and

(e) the participant agrees to follow the terms and conditions of the signed participant application which then becomes the agreement.

(2) Acceptance into the SFMNP is based on meeting the eligibility criteria in (1)(a) through (e) and available funding.

(3) Eligible participants may designate a proxy to submit the application, shop at the farmers' market, or pick up their eligible foods from the contracted Bulk Purchase Program on their behalf, if the senior is unable to perform these actions. Eligible participants must submit a signed statement designating the individual as their authorized representative.

(4) The eligible participant may designate a proxy at any point during the program's period of operation.

(5) SFMNP funds are limited and benefits will be distributed on a first come first served basis. SFMNP coupons are subject to the following:

(a) SFMNP coupons are only valid from June 1 through the first week in November of each year;

(b) lost or stolen SFMNP coupons will not be replaced; and

(c) an eligible participant who does not receive SFMNP coupons due to lack of available funding is not entitled to an appeal or fair hearing.

(6) The participant who is denied or deemed ineligible for reasons other than those stated in (1)(a) through (c) and (5) has the right to appeal this action.

AUTH: 52-1-103, 52-3-504, MCA
IMP: 52-3-102, 52-3-505, MCA

NEW RULE IV SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP): FARMER ELIGIBILITY AND PARTICIPATION (1) Only authorized farmers may accept SFMNP coupons in exchange for eligible foods.

(2) In order to be eligible for participation in the SFMNP, a farmer applicant must:

(a) complete or renew the farmer agreement provided by the department;

(b) agree to follow the terms and conditions in the farmer agreement; and

(c) complete the initial and annual SFMNP training provided by the department in accordance with 7 CFR 249.10.

(3) Approved farmer agreements are valid for three consecutive summer farmers' market seasons.

AUTH: 52-1-103, 52-3-504, MCA
IMP: 52-3-102, 52-3-505, MCA

NEW RULE V SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP): FARMER PARTICIPATION REQUIREMENTS AND VIOLATIONS

(1) An authorized farmer must comply with SFMNP requirements contained in the terms and conditions of the farmer agreement and 7 CFR 249.

(2) A farmer is in violation of the SFMNP if the farmer fails to:

(a) comply with the SFMNP and terms and conditions of the farmer agreement as required in [NEW RULE IV]; and

(b) accept the initial and annual training on SFMNP requirements provided by the department.

AUTH: 52-1-103, 52-3-504, MCA
IMP: 52-3-102, 52-3-505, MCA

NEW RULE VI SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP): MONITORING OF FARMERS (1) The department will conduct monitoring reviews of the operations of randomly selected authorized farmers at the designated summer farmers' market locations. The annual monitoring review is conducted to determine:

(a) whether the farmer demonstrates ability to meet Montana SFMNP requirements, as evidenced by the on-site observations, interviews, and third party information during the current agreement; and

(b) whether patterns of participant use demonstrate compliance with the SFMNP.

(2) The on-site monitoring and reviews will include no less than one-tenth of the total currently authorized farmers to include farmers that are considered high-risk in accordance with 7 CFR 249.10. High risk is defined as:

(a) newly authorized farmers;

(b) farmers about whom the department has received participant or local agency complaints; and

(c) farmers who receive a proportionately high volume of coupons as compared to other farmers at the same summer market location.

(3) On-site or follow-up contact by means other than (2)(a) through (c) may occur when warranted by incomplete information or complaint.

(4) The department may conduct unannounced on-site monitoring visits.

AUTH: 52-1-103, 52-3-504, MCA
IMP: 52-3-102, 52-3-505, MCA

NEW RULE VII SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP): FARMER DISQUALIFICATION AND SANCTIONS (1) Based upon outcome of the monitoring as defined in [NEW RULE VI], the department may take

an adverse action against the farmer, including disqualification of the farmer from participation in the program.

(2) A written warning may be issued for a first violation of the following:

(a) noncompliance with SFMNP rules and procedures as outlined in the farmer agreement not specifically listed as a violation;

(b) refusal to accept valid coupons for eligible produce;

(c) failure to permit or comply with procedures regarding on-site monitoring visits;

(d) charging participants a price for an item that is greater than that charged to nonparticipants;

(e) charging for items not received; or

(f) accepting coupons after the end of the summer market season.

(3) A second violation of (2)(a) through (f) may result in a 15-day suspension during the current market season.

(4) Suspension from the SFMNP for the remainder of the current market season may occur as a result of the following:

(a) subsequent or continued violations described in (2)(a) through (f);

(b) accepting SFMNP coupons for nonlocally grown produce;

(c) exchanging ineligible products for coupons;

(d) accepting coupons in exchange for cash;

(e) cashing coupons for a nonauthorized farmer;

(f) issuing cash change for purchases less than value of coupon; or

(g) participating in discriminatory practices as defined in the terms and conditions of the farmer agreement and in accordance with 7 CFR 249.7.

(5) A farmer will face immediate disqualification without reinstatement and liable to prosecution under applicable federal, state, or local laws if the farmer engages in illegal activity.

(6) When taking an adverse action involving a suspension against or disqualification of a farmer from the SFMNP, the department will provide the affected farmer with written notice not less than 15 days in advance of the pending action. The notice must include the reasons for the adverse action, the date of adverse action, and, except in cases of the expiration of the farmers' SFMNP agreement, the farmers' right to appeal as set forth in [NEW RULE IX].

AUTH: 52-1-103, 52-3-504, MCA
IMP: 52-3-102, 52-3-505, MCA

NEW RULE VIII SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP): MONITORING, REVIEW, AND DISQUALIFICATION OF LOCAL AGENCIES (1) The department will conduct on-site monitoring reviews of the qualifications of authorized local agencies. In conducting such reviews, the department will consider the program's history of prior program compliance. On-site review will be conducted to determine program compliance and may include:

(a) a file review of ten percent or more of completed participant applications;

(b) review of procedures for secure storage of coupons, participant agreements, and other documents with identifying information;

(c) review of procedures and documentation of coupon distribution, accountability, and redemption.

(2) When disqualifying a local agency under the SFMNP, the department will provide the local agency with written notice not less than 30 days in advance of the pending action. The notice must include an explanation of the reasons for disqualification, the date of disqualification, and, except in cases of the expiration of a local agency's agreement, the local agency's right to appeal as set forth in 7 CFR 249.16. The notice will ensure that the action is not in conflict with any existing written agreements between the department and the local agency.

AUTH: 52-1-103, 52-3-504, MCA
IMP: 52-3-102, 52-3-505, MCA

NEW RULE IX SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP): APPEALS BY PARTICIPANTS, FARMERS, AND LOCAL AGENCIES

(1) A participant who is denied participation or been disqualified from the program by the local agency may request a fair hearing before the department in accordance with [NEW RULE X] and 7 CFR 249.16.

(2) Expiration of the participant application or disqualification of the application due to ineligibility as the result of age, income, or insufficient program funds as established by 7 CFR 249.6 is not subject to appeal.

(3) A local agency or farmer may request a fair hearing before the department if:

(a) they are denied participation;

(b) they are disqualified during the current valid written agreement; or

(c) their participation is otherwise adversely affected.

(4) Expiration of the agreement with a farmer or local agency is not subject to appeal.

(5) The issuance of notice of adverse action, the processing of fair hearing requests, and the conduct of such hearings will be in accordance with provisions set forth in [NEW RULE X].

AUTH: 52-1-103, 52-3-504, MCA
IMP: 52-3-102, 52-3-505, MCA

NEW RULE X SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP): FAIR HEARING PROCEDURES (1) A designated local agency, farmer, or participant is entitled to a hearing if they are aggrieved by an adverse department determination which:

(a) results in a denial of an application or agreement by the local or state agency; or

(b) results in a revocation or correction plan for failure to comply substantially with the requirements of the application or agreement.

(2) The hearing will be conducted according to the applicable provisions of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

AUTH: 52-1-103, 52-3-504, MCA
IMP: 52-3-102, 52-3-505, MCA

4. STATEMENT OF REASONABLE NECESSITY

The United States Department of Agriculture (USDA) grants funding to states for the Senior Farmers' Market Nutrition Program (SFMNP) through section 7 CFR 249 of the Federal Code. The SFMNP provides a resource to income-eligible seniors to receive coupons and exchange them for fresh produce during the summer farmers' market season. This ensures that seniors have access to fresh produce for up to $50 per season and provides an opportunity for socialization. These rules establish a more formal guidance and process for the farmers who wish to be involved in the SFMNP and participants to receive its benefits. The USDA sets guidelines for eligibility, review, and an appeal and fair hearing process for the participants, farmers, and local agencies in the event that a denial or violation of federal requirements occurs.

Montana has been involved in the SFMNP since 2006. A 2013 USDA audit determined that the department was out of compliance with the federal appeal and fair-hearing process requirements. Currently no administrative rules exist for SFMNP. These proposed rules are necessary to bring Montana into compliance with federal requirements.

Generally, NEW RULES I through X establish the purpose, definitions, eligibility determination procedures, and appeal and fair hearing processes relating to the department's proposed adverse actions against SFMNP participants, farmers, and local agencies which are defined in NEW RULE II, in compliance with 7 CFR 249.

NEW RULES I and II

These proposed rules are necessary to provide a clear procedural framework under which the department administers the SFMNP under section 4402 of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 3007. They also define the terms specific to SFMNP, its application process, and training components as established by 7 CFR 249 and the SFMNP state plan.

NEW RULES III, IV, and V

These proposed rules are necessary because they provide guidelines for application and participation for those who wish to participate in SFMNP. These criteria are established by 7 CFR 249.

NEW RULES VI, VII, and VIII

These proposed rules are necessary as they provide guidance to the department for conducting compliance reviews of the farmers that accept coupons for redemption in accordance with 7 CFR 249 and local agencies that administer SFMNP. These

rules also establish the criteria for levels of violations found while conducting these reviews and a procedure and notification of adverse actions that could include suspension and disqualification of a farmer from continued participation.

NEW RULE IX

This proposed rule establishes the criteria and process in which a participant, local agency, and farmer can appeal a decision if their application or agreement for SFMNP has been denied or suspended as a result of a violation. This rule also establishes the circumstances in which an appeal cannot be filed as set by 7 CFR 249. This is necessary to be in compliance with federal regulations.

NEW RULE X

This proposed rule establishes the criteria for a fair hearing for both the farmer and a participant which coincides with the fair hearing processes established by ARM 37.5.304 through 37.5.337. A fair hearing process is required by 7 CFR 249. These rules are necessary to be in compliance with federal regulations.

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., April 7, 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 adoption of the above-referenced rules 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/ Caroline Warne
Caroline Warne, Attorney
Rule Reviewer

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

Certified to the Secretary of State February 27, 2017.

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

In the matter of the amendment of ARM 37.86.3503 pertaining to clarifying the definition of severe disabling mental illness	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 30, 2017, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at 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 22, 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 proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.86.3503 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, SEVERE DISABLING MENTAL ILLNESS

(1) "Severe disabling mental illness" means with respect to a person who is 18 or more years of age that the person meets the requirements of (1)(a), ~~or~~ (b), ~~and~~ or (c). The person must also meet the requirements of (1)(d). The person:

(a) remains the same.

(b) has recurrent suicidal ideation within the past 12 months, a history of suicide attempts, or a specific plan for completing suicide; ~~and~~ or

(c) and (d) 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) is proposing to amend ARM 37.86.3503. This proposed amendment is necessary in order to

ensure the definition for severe disabling mental illness (SDMI) correctly defines the requirements for SDMI.

ARM 37.86.3503

The language is being amended to clarify that SDMI includes a person that has: been involuntarily hospitalized due to a mental disorder at the Montana State Hospital within the past 12 months; had recurrent suicidal ideation within the past 12 months; a history of suicide attempts or a specific plan for completing suicide; or a primary diagnosis as listed in (1)(c). In addition, a person must still meet the functional impairment requirements listed in (1)(d).

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., April 7, 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 27, 2017.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VI pertaining to hemp definitions and license applications	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 20, 2017, the Department of Agriculture published MAR Notice No. 4-17-237 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 114 of the 2017 Montana Administrative Register, Issue Number 2.

2. The department has adopted the following rules as proposed: New Rule I (4.19.101), New Rule II (4.19.102), New Rule III (4.19.103), New Rule IV (4.19.104), and New Rule VI (4.19.106).

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

NEW RULE V (4.19.105) LAB TESTING FEES (1) The department will charge any licensee or law enforcement agency ~~$100~~ 250 per test for THC levels of a plant.

(2) The department may approve third party testing providers.

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

COMMENT #1: The fee for hemp testing is too low given the methodology the department plans to use.

RESPONSE #1: The fee was adjusted in New Rule V (4.19.105) to reflect the actual cost.

COMMENT #2: Who pays for testing–the grower or the requester of the test?

RESPONSE #2: The party who requested the test must pay for it, so the grower only pays if they are the requester of the test.

COMMENT #3: If the federal government changes its rules/laws, will the department change its fee structures?

RESPONSE #3: Yes, if the change would result in the fee not reflecting the regulatory cost, the department would propose new fees by rule.

COMMENT #4: What if I wish to grow hemp, but not be in the pilot program?

RESPONSE #4: You would still need the state license. If you are not in the pilot program and you are growing hemp, you may be in violation of federal law.

COMMENT #5: (by multiple people) I support the program and encourage the department to implement and promote it.

RESPONSE #5: No response is necessary.

/s/ Cort Jensen	/s/ Libbi Lovshin
Cort Jensen	Libbi Lovshin
Rule Reviewer	Administrator
	Agriculture

Certified to the Secretary of State February 27, 2017.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.50.403 and 17.50.502, pertaining to definitions of solid waste management, and the adoption of a new subchapter codifying New Rules I through XIV for landfarm facility standards and the adoption of a new subchapter codifying New Rules XV through XXVII for compost standards and definitions	)))))))))	NOTICE OF AMENDMENT AND ADOPTION (SOLID WASTE MANAGEMENT)

TO: All Concerned Persons

1. On January 6, 2017, the Department of Environmental Quality published MAR Notice No. 17-388 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 3, 2017 Montana Administrative Register, Issue Number 1.

2. The department has amended ARM 17.50.403 and 17.50.502, and adopted New Rules I (17.50.1601), II (17.50.1602), III (17.50.1603), IV (17.50.1606), V (17.50.1607), VI (17.50.1608), VII (17.50.1611), VIII (17.50.1612), IX (17.50.1613), X (17.50.1616), XI (17.50.1617), XII (17.50.1618), XIII (17.50.1621), XIV (17.50.1622), XV (17.50.1701), XVI (17.50.1702), XVII (17.50.1703), XVIII (17.50.1706), XIX (17.50.1707), XX (17.50.1708), XXI (17.50.1711), XXII (17.50.1712), XXIII (17.50.1713), XXIV (17.50.1716), XXV (17.50.1717), XXVI (17.50.1718), and XXVII (17.50.1719) exactly as proposed.

3. No public comments or testimony were received.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

BY: */s/ Tom Livers*
TOM LIVERS, Director

Certified to the Secretary of State, February 27, 2017.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to inmate worker savings subaccount	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On September 23, 2016, the Department of Corrections published MAR Notice No. 20-12-60 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1623 of the 2016 Montana Administrative Register, Issue Number 18.

2. The department adopts the above-stated rule as proposed: New Rule I (20.13.103).

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

COMMENT #1: Several commenters who are in the department's custody in Montana under the Interstate Corrections Compact (ICC), stated that ICC inmates should be exempt from the mandatory worker savings subaccount provisions of 53-1-107(4), MCA. Some of the ICC inmates stated that as an alternative to exempting ICC inmates from the savings program, the department should cap the mandatory savings at, for example, $200, and make no further deductions from their earnings after that amount has accumulated in their inmate worker savings subaccount.

Numerous other inmates also suggested a cap on mandatory savings without regard to ICC status. One commenter suggested it is impossible to know if the proposed percentage of earnings to be set aside in an inmate worker savings subaccount to help meet reentry expenses upon release is fair unless the department defines "reentry expenses."

RESPONSE #1: The legislature did not exempt ICC inmates from the mandatory savings program established under 53-1-107(4), MCA. When construing a statute, the department may not insert what the legislature omitted or omit what the legislature inserted. Nor may the department engraft onto a statute, through rulemaking, provisions that are consistent with statute but which the legislature did not contemplate. The legislature mandated deductions from monthly earnings be set aside in savings and disbursed to the inmate upon release. There is no evidence that the legislature intended that the monthly savings deduction cease at any time before the inmate's release from prison.

The department declines to define "reentry expenses" to include certain expenses and exclude others. Every inmate's reentry expenses will be different. A $200 cap,

for example, on the total amount that must be saved, ignores the reality that $200 will not cover a fraction of actual reentry expenses. Many inmates will not have families and households to return to upon release and will need more savings to re-establish themselves in society. The department believes that savings should be sufficient to sustain inmates in the community until they have stable employment and have met the initial substantial reentry expenses including, but not limited to, housing, transportation, utilities, food, treatment services, insurance, and reinstatement of driver licenses. All inmates, irrespective of their actual reentry expenses will receive the balance of their inmate worker savings subaccount upon release.

COMMENT #2: Numerous commenters objected to the hardship that the requirement for mandatory inmate worker savings will cause them in terms of their ability to buy telephone time or to purchase stamped envelopes, paper, personal hygiene items, etc.

RESPONSE #2: The inmate worker savings program under 53-1-107(4), MCA, was mandated by the legislature and the department must implement that law. New Rule I (20.13.103) has a safety net. If the 20% savings deduction would render the inmate indigent under DOC Policy 4.1.4 then the department will not deduct any savings that month.

COMMENT #3: A commenter serving a life sentence without parole stated he should be exempt from the mandatory inmate worker savings program.

RESPONSE #3: An inmate serving a sentence of life without parole is exempt from the inmate worker savings program. The purpose of the savings program is that funds be available to the inmate upon release to meet reentry expenses. An inmate serving a life sentence without parole will not be released so the savings deduction could not have been intended to apply in that circumstance.

COMMENT #4: Several inmates serving very long sentences, but who will technically be parole-eligible at some point, commented that they should also be exempt from the mandatory inmate worker savings program as are inmates serving life sentences without parole. One commenter objected to the fact that the funds deducted from his earnings will accumulate in his savings subaccount but will never be accessible to him because he has a 144-year sentence and believes he will die before he is released.

RESPONSE #4: The department declines to create an exemption from the savings requirement for inmates serving very long sentences because there is no clear legislative authority to do so.

COMMENT #5: An inmate stated she makes $1.25 per day and after restitution is deducted, she has $24/month to spend at the commissary for necessities (e.g., personal hygiene items, stamped envelopes). The commenter stated if the department takes another 20% for mandatory inmate worker savings, she won't be

able to buy what she needs. She also stated if she lives another 6 years to release, her reentry expenses will be minimal because family will pay for her transportation home and she will be living with her son. She asked the department to reconsider forced savings and cap the amount for people over 60 years of age and who make as little as she.

RESPONSE #5: The legislature made the inmate worker savings program mandatory under 53-1-107(4), MCA. The department has no authority to adopt rules that would conflict with that statute or engraft onto the statute provisions that the legislature did not contemplate such as a cap on mandatory savings. The inmate worker savings program and the rules implementing it cannot be tailored to the circumstances and anticipated reentry expenses of each individual inmate but must be applied to all inmates alike. The balance in the commenter's inmate worker savings subaccount will be disbursed to the inmate upon release.

COMMENT #6: Several persons commented that the inmate worker savings program is a disincentive for inmates to work because they cannot use the money unless or until released from custody.

RESPONSE #6: Under the proposed rule, the percentage of inmate earnings set aside in the inmate worker savings subaccount is 20%, leaving for the inmate's use the remaining balance of their monthly earning from work, education, or treatment assignments. In addition, the inmate has use of the balance of funds from other sources after deductions are taken to meet the inmate's obligations in 53-1-107(2), MCA. The funds applied to those obligations directly benefit the inmate by reducing or retiring their debt before release.

COMMENT #7: A commenter serving a life sentence without parole stated he has restitution taken out of his inmate trust account and will soon have a child support obligation. He stated that mandatory savings is an added financial burden on his family. The commenter added that he has pertinent education and would like to teach finance and accounting on the high-side of the prison so inmates understand what the savings account is for and how to use it as an opportunity to increase their chances of success upon release.

RESPONSE #7: As an inmate serving a life sentence without parole, the commenter is exempt from the mandatory inmate worker savings program under 53-1-107(4), MCA. (See detailed response related to that issue in Response # 3). Child support and restitution are deducted pursuant to 53-1-107(2), MCA. The restitution obligations of inmates would not exist but for the financial harm caused to the inmates' crime victims. The commenter may use the intra-facility OSR system to notify the director of education of his interest in teaching finance to other inmates.

COMMENT #8: A commenter stated that mandatory worker savings is not practical unless the inmate makes at least $100/month and that a 20% deduction for savings will cause more poverty by impacting the inmate's ability to help support family. The commenter stated he makes $2.50 per day and 15% of that is deducted for court

fines and fees. He noted that most inmates make less than $50 per month and their expenses include the cost of phone calls, stamped envelopes, and other commissary items. The commenter said he must choose who to call or write and that in order to send a birthday present out he must choose to go without food, toothpaste, shampoo, etc. The commenter went on to say that the prison and taxpayers profit from the poverty of inmate workers who do labor at the prison that would cost hundreds of thousands of dollars per year if the facility had to use staff or contract workers to perform the work.

RESPONSE #8: Inmates do not need to choose between food and other items or privileges. Inmates are not required to pay for the three meals per day that they are served. Funds in an inmate's regular trust account that are not required to be applied each month on the obligations identified in 53-1-107(2), MCA, are available for the inmate's use. After the 20% savings deduction is made from an inmate's earnings derived from work, education, and treatment assignments under 53-1-107(4), MCA, the remaining earnings are available for the inmate's use. The department deems the 20% savings deduction to be reasonable and the rule provides that the deduction will not be made if it renders the inmate indigent. The use of inmate labor is expressly authorized by statutes including 53-1-207, 53-30-131, and 53-30-151, MCA.

COMMENT #9: The commenter echoed other comments to the effect that the exemption from mandatory savings for persons serving life sentences without parole should be extended to all inmates with life sentences because some will die before serving 33 years and becoming parole eligible; moreover, parole eligibility does not assure they will be paroled.

The commenter also stated that: a) each inmate should choose their preferred percentage deduction for mandatory saving; b) the savings deduction should be optional; c) inmates should be exempt from mandatory savings if they make less than $50 per month so they have funds with which to make purchases of personal hygiene items and other items at the commissary; and/or d) other deductions should not be taken off the top before the 20% savings deduction is taken.

The commenter stated that the 20% savings will unethically motivate staff to manipulate inmate income for personal gain.

Lastly, the commenter stated that inmates need access to money in the worker savings subaccount before release to obtain a driver license or to have a driver license reinstated.

RESPONSE #9: See Response #4 addressing the comment that inmates serving life sentences but who may become parole eligible should be exempt from the inmate worker savings deduction under 53-1-107(4), MCA. The inmate worker savings program is mandatory and the legislature directed the department to establish a percentage savings deduction by rule. The department has no authority to allow inmate workers to opt out of the savings program or to allow each individual

inmate to choose what percentage they want to have deducted for savings. No deduction for savings will be made under this rule if the deduction would render the inmate indigent and unable to purchase necessities at the commissary.

It is unclear from the comment how inmate income could be manipulated by staff for personal gain. Inmates receive monthly accountings of their trust account activity, there is an inmate grievance procedure in place, and the department is subject to regular financial audits.

Under 53-1-107(4), MCA and this rule, inmates may request that the department disburse funds from the inmate's worker savings subaccount prior to the inmate's release to meet impending reentry expenses such as obtaining a driver license.

COMMENT #10: If the department deducts 20% from earnings, the commenter states he will not have enough money to live on because unlike some inmates, he has no one on the outside who sends him money.

RESPONSE #10: Section 53-1-107(4), MCA requires that the department set in rule a percentage of inmate workers' earnings to be deducted and set aside in the inmate worker savings subaccount. Rules must be applied to all inmates who are subject to them and they cannot be tailored to an individual inmate's specific circumstances.

COMMENT #11: Montana Correctional Enterprises (MCE) workers have a savings plan already. They should be exempt from the mandatory inmate worker savings subaccount rule. The commenter estimated that under the MCE savings plan he will have a total of $3,300 in savings when paroled.

RESPONSE #11: The existing MCE savings plan is not an earnings-based program but a longevity-based program. No deductions are taken from MCE workers' earnings to fund that savings program. The legislature did not exempt MCE workers from the inmate worker mandatory savings program under 51-3-107(4), MCA.

COMMENT #12: One commenter said the inmate worker savings program puts the cart before the horse, i.e., that a financial planning class should be mandatory and that inmates should then be allowed to choose the percentage of earnings to be saved and to open an individual interest-bearing savings account. Alternatively, the commenter stated the department should lower the percentage of the savings deduction and/or cap the savings required.

RESPONSE #12: As to the comment relating to individual interest bearing accounts, department policy 1.2.6 provides that the common inmate trust account is non-interest bearing and 53-1-107, MCA requires inmates to use the prison inmate trust account system administered by the department for their financial transactions. The same statute authorizes the department to use a portion of an inmate's funds in the inmate trust accounting system to apply toward the inmates' obligations identified in 53-1-107(2), MCA, and to set a percentage to be deducted from inmate workers'

earnings under 53-1-107(4), MCA, for disbursement to the inmate upon release to meet reentry expenses.

Since at least 2003, inmates have had the ability under 53-1-107(3)(b), MCA, to voluntarily save funds available after deductions for obligations under 53-1-107(2), (3), and (5) MCA, in a savings subaccount in the department's inmate trust accounting system. In 2015, the legislature saw fit to mandate inmate worker savings under 53-1-107(4), MCA for disbursement to the inmates only upon release.

Because the inmate worker savings program is mandatory the department declines to require a financial planning class because it could not effectively enforce such a requirement. The earnings belong to the inmates and must be disbursed to them upon release whether they have completed a financial planning class or not. Stand-alone classes in life skills, business math, and personal finance are available to inmates at the facilities if the inmates choose to avail themselves of that educational opportunity.

COMMENT #13: A commenter residing in the community questioned whether someone is trying to get a law passed to require inmates to pay for their own medical care and stated she would be opposed to such a law.

RESPONSE #13: The 2015 amendment to 53-1-107(4), MCA, being implemented by this rule, did not cover the issue of inmates' medical and other health care expenses. That issue is beyond the scope of MAR Notice No. 20-12-60.

COMMENT #14: Several inmate commenters and members of the public asked whether a person who is exempt from the inmate worker savings program (i.e., an inmate serving a life sentence without parole) must ask every month that the department return to their inmate trust account, the funds deducted from their earnings and credited to their savings subaccount. The commenter asked whether other options are available, such as requesting the return of savings for a certain period or requesting a portion of the deducted savings be returned and the rest be allowed to accumulate in the inmate worker savings subaccount.

RESPONSE #14: At this time, the department is electing not to make the type of changes to the proposed rule that the commenter thoughtfully suggested. The department must carefully consider the implications and possible unintended consequences for business record keeping purposes of allowing different or additional options than requiring inmates serving life sentences without parole to request that the savings deduction be reversed each month and the funds returned to their regular inmate trust account.

COMMENT #15: One commenter stated there is a minimum wage in place for inmate workers at the Montana Women's Prison (MWP) but not at Montana State Prison (MSP) and that inmates at MSP need to make more or the department needs to deduct less for the mandatory inmate worker savings program.

RESPONSE #15: All department-owned facilities and facilities under contract to the department have a uniform pay structure for inmate workers' pay.

COMMENT #16: A member of the public commented that a family member will not be parole eligible until 2050 and by then the inmate will have 34 years of accumulated savings. In the meantime, the savings deduction will reduce the funds available to the inmate to sustain whatever semblance of a lifestyle is possible inside the prison. The commenter stated that the family member needs his earnings to buy things including work boots.

RESPONSE #16: Inmates are provided with standard prison-issue shoes at no cost and work shoes and boots needed by some inmates in certain work programs must be purchased through the facility's commissary using their own funds. Many inmate workers earn very modest sums of money from work assignments. The amount that will have accumulated in their worker savings subaccounts will not be unreasonably or unnecessarily large at the time of their release even after 34+ years of incarceration.

COMMENT #17: One commenter stated he is Native American and that the inmate worker savings subaccount program prejudices Native Americans because a portion of the per capita money that Native American inmates receive is applied by the department to restitution, fines, and fees. The inmates are unable to send money home to family and friends when they desire to do so. The commenter also stated he should not need department approval to send money out of the facility.

RESPONSE #17: The department is authorized to use a portion of inmates' funds derived from any source to apply towards restitution under 53-1-107(2), (3), and (5), MCA. Available remaining funds in the inmate's regular trust account that are not needed by the inmate to purchase necessities such as personal hygiene items at the commissary, may be sent by the inmate to approved recipients. The department has an obligation under 53-1-107(5), MCA, to inhibit an inmate's ability to deal in contraband or engage in illegal acts within or outside the state prison, e.g., to inhibit criminal enterprises operating from within the prison through persons on the outside. Therefore, inmates may only send money to and receive money from department-approved recipients.

Native Americans' per capita monies are not earnings payable to an inmate worker by the department and are therefore not additionally subject to the 20% worker savings deduction under 53-1-107(4), MCA and New Rule I (20.13.103). Any portion of the inmate's remaining earnings from work assignments may also be sent by the inmate to approved recipients.

The state laws and administrative rules relating to funds that are subject to 53-1-107(2), MCA, apply to all inmates alike.

COMMENT #18: A commenter stated that the department should be allowed to deduct money to apply toward the obligations under 53-1-107(2), MCA, or to deduct

money to be credited to the inmate worker savings subaccount under 53-1-107(4), MCA, but it should not be allowed to do both.

RESPONSE #18: Section 53-1-107(2), (3), and (5), MCA require deduction of inmate funds to be applied toward the obligations identified in subsection (2) of the statute including restitution. Section 53-1-107(4), MCA requires that a percentage not to exceed 25% be deducted from inmate worker earnings and set aside for the inmate in an inmate worker savings subaccount to help meet reentry expenses upon release. The department must implement both mandates of the legislature.

COMMENT #19: One couple commented that they live on Social Security and struggle to send a small amount of money each month to their son in prison and it is not fair that the department takes the money that they send him and uses it for all the things that the law demands. The commenters stated that if the inmate worker savings law passes, they will no longer be able to send him money only to have it taken by the department.

RESPONSE #19: The law requiring the use of inmate funds for the purposes identified in 53-1-107(2), (3), (4), and (5), MCA, is already in effect. The department's rules must implement what the legislature mandated. The only source of funds subject to the savings deduction is the inmate worker's earnings from work assignments, education assignments, or treatment assignments payable by the department. Funds sent to the inmate by family members such as the couple who commented will not be subject to the savings deduction.

COMMENT #20: A member of the public commented that the inmate workers' savings subaccount is a very good idea because the source of the savings is the inmates' own earnings. The commenter disagreed, however, with applying funds sent to the inmate by family or friends on the inmate's obligations in 53-1-107(2), MCA.

RESPONSE #20: Once money is provided to an inmate by approved family members or friends, the money belongs to the inmate and is subject to deductions to pay down obligations in 53-1-107(2), MCA.

/s/ Colleen E. Ambrose	/s/ Loraine Wodnik
Attorney	Interim Director
Rule Reviewer	Department of Corrections

Certified to the Secretary of State February 27, 2017.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to inmate trust accounts	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On September 23, 2016, the Department of Corrections published MAR Notice No. 20-12-61 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1628 of the 2016 Montana Administrative Register, Issue Number 18.

2. The department has adopted the above-stated rule as proposed: New Rule I (20.13.102).

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

COMMENT #1: Several commenters objected to either the legality of being ordered by a court to pay restitution or the process by which that occurred.

RESPONSE #1: No response is necessary or appropriate because the legality of an inmate's sentence and due process issues related to sentencing are outside the purpose and scope of the administrative rule-making process.

COMMENT #2: Some commenters objected to the substantive provisions of 53-1-107(2), MCA, concerning use of an inmate's funds to pay the inmate's obligations identified in that statute.

RESPONSE #2: Statutes can only be amended or repealed through the legislative process. Accordingly, no department response is necessary or appropriate.

COMMENT #3: Numerous commenters objected to application of funds sent to them by family members to pay down their court-ordered restitution obligations.

RESPONSE #3: Section 53-1-107, MCA states that funds in the inmate's account from any source are subject to being applied by the department to the inmate's court-ordered restitution obligation.

COMMENT #4: One commenter demanded an accounting of all funds provided by family members and applied to a court-ordered restitution obligation.

RESPONSE #4: Inmates receive a monthly written accounting of all transactions involving their account in the prison inmate trust account system administered by the department.

COMMENT #5: Several commenters stated inmates could more readily pay their obligations if they were paroled and could get jobs.

RESPONSE #5: Parole issues are outside the scope of MAR Notice No. 20-12-61. Therefore, no response is necessary.

COMMENT #6: One commenter stated he is Native American and that the inmate worker savings subaccount program prejudices Native Americans because a portion of the per capita money that Native American inmates receive is applied by the department to restitution, fines, and fees and the inmates are unable to send money home to family and friends when they desire to do so. The commenter also stated he should not need department approval to send money out of the facility.

RESPONSE #6: The department is authorized to use a portion of inmates' funds derived from any source to apply towards restitution under 53-1-107(2), (3), and (5), MCA and ARM 20.12.106. The rule adopted in 2003 allows the department to take up to 50% of money that enters an inmate's prison account to satisfy the offender's restitution obligation. Available remaining funds not applied to other obligations specified in 53-1-107(2), MCA, may be sent by the inmate to approved recipients. The department has an obligation under 53-1-107(5), MCA, to inhibit an inmate's ability to deal in contraband or illegal acts within or outside the state prison, e.g., to inhibit criminal enterprises operating from within the prison through persons on the outside. Therefore, inmates may only send money to and receive money from department-approved recipients.

Native Americans' per capita monies are not earnings payable to an inmate worker by the department and are therefore not additionally subject to the 20% workers' savings deduction under 53-1-107(4), MCA and New Rule I (20.13.103) in MAR Notice No. 20-12-60. Any portion of the inmate's remaining earnings from work assignments may also be sent by the inmate to approved recipients.

The rules apply to all inmates alike and do not favor or prejudice anyone.

COMMENT #7: An inmate commented that he is opposed to new law 53-1-107, MCA, (although he realizes it is already the law). He objected to there being no stated limit on the amount or percentage of the inmate's funds that may be used by the department to apply toward the inmate's obligations under 53-1-107(2), MCA.

RESPONSE #7: Under ARM 20.12.106 adopted in 2003, the department may take up to 50% of money that enters an inmate's prison account to satisfy the offender's restitution obligation.

COMMENT #8: One inmate commented that he was given credit against his sentence for 434 days in jail but there was no commensurate adjustment to the amount he was assessed for costs of incarceration payable from his inmate trust account under 53-1-107(2), (3), and (5), MCA.

The commenter also stated that New Rule I (20.13.102) in MAR Notice No. 20-12-61 tries to legitimize the fact that money has been taken for years and applied on the obligations in 53-1-107(2), MCA. The commenter stated that the rule notice was not published in the newspaper and requested that someone meet with inmates at Crossroads Correctional Center who cannot attend the rule hearing in Helena. Lastly, the inmate stated that an inmate trust account should be interest bearing.

RESPONSE #8: Credit given against the term of a person's sentence for jail time served is entirely independent of the assessment of the costs of incarceration. An inmate is not entitled under law to a commensurate reduction in assessed costs of incarceration when credit is given against the term of the sentence for jail time served while awaiting trial or transport. Costs of incarceration are incurred during that period irrespective of the credit subsequently given against the term of the inmate's sentence for jail time served.

Section 53-1-107(2), (3), and (5), MCA, authorize the department to use funds in inmates' trust accounts to pay the inmates' financial obligations identified in subsection (2) of the statute. ARM 20.12.106 which became effective October 31, 2003, authorized the department to use up to 50% of the money that enters the inmate's prison account to satisfy the inmate's restitution obligation.

DOC Policy 1.2.6 pertaining to the inmate trust accounting system provides that the account is non-interest bearing. Interest on the small balance in an inmate's account would amount to fractions of a cent and the costs of administering an interest-bearing system would be prohibitive. Although 53-1-107, MCA, states that the department may charge an inmate a minimum fee not to exceed $2 each month to administer the inmate's account, the department has not historically charged any fee. A $2 per month fee would far exceed the amount of the accrued interest on an inmate's trust account in that period of time.

Rulemaking follows a procedure set in the Montana Administrative Procedure Act. There is no requirement for publication of rule notices in newspapers. Rule notices are published in the Montana Administrative Register (MAR) administered by the Montana Secretary of State's Office as required by law. There is no statutory requirement that the department be physically present at each location where persons interested in the rule might be located. Rather, hearings were held at the designated times and places stated in MAR Notice No. 20-12-60 and MAR Notice No. 20-12-61. The statutorily required comment period was afforded and 26 persons from around the state submitted comments including three persons in attendance at the hearings in Helena.

COMMENT #9: A commenter stated the department should only be able to deduct funds to be applied to restitution obligations or to set aside in savings subaccounts but not both.

RESPONSE #9: Section 53-1-107(2), (3), and (5), MCA require deduction of inmate funds to be applied toward the obligations identified in subsection (2) of the statute including restitution. Section 53-1-107(4), MCA requires that a percentage not to exceed 25% be deducted from inmate worker earnings and set aside for the inmate in an inmate worker savings subaccount to help meet reentry expenses upon release. The department must implement both mandates of the legislature.

COMMENT #10: An elderly couple commented that they live on Social Security and struggle to send a small amount of money to their son who is in prison. It is not fair that the department takes the money that they send him for all the things that the law demands. The commenters stated that if the inmate worker savings law passes, they will no longer be able to send him money just to have it taken by the department.

RESPONSE #10: The law requiring the use of inmate funds for the purposes identified in 53-1-107(2), (3), (4), and (5), MCA, is already in effect. The department's rules must implement what the legislature mandated. The only source of funds subject to the savings deduction is inmate workers' earnings from work assignments, education assignments, or treatment assignments payable by the department. Funds sent to the inmate by family members are not be subject to the savings deduction.

COMMENT #11: Several commenters asked what amount in an inmate trust account triggers indigent status. One of those commenters also stated that inmates should be able to name a beneficiary.

RESPONSE #11: Under DOC Policy 4.1.4, if an inmate's trust account balance drops below $15 and the inmate is not otherwise disqualified under IV.A.2.b of the policy, the inmate is considered indigent. Inmates may make wills directing the disposition of their property upon death. In addition, inmates may designate beneficiaries by decedent warrants for the disposition of their inmate trust account balances upon death.

COMMENT #12: A member of the public commented that the inmate worker savings subaccount is a very good idea because the source of the savings is the inmates' own earnings. The commenter disagreed, however, with applying funds sent to the inmate by family or friends on the inmate's obligations in 53-1-107(2), MCA.

RESPONSE #12: Once money is provided to an inmate by approved family members or friends, the money is subject to deductions to pay obligations as mandated by 53-1-107(2), MCA.

COMMENT #13: A commenter residing in the community and having a friend in prison questioned whether someone is trying to get a law passed to require inmates to pay for their own medical care; she would be opposed to such a law.

RESPONSE #13: The requirement in 53-1-107(2), MCA, that inmates pay the costs of their medical care (and other health care services), has been in effect since 2003 and legislative action would be required to amend the statute.

/s/ Colleen E. Ambrose
Attorney
Rule Reviewer

/s/ Loraine Wodnik
Interim Director
Department of Corrections

Certified to the Secretary of State February 27, 2017.

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.129.401 fees, 24.129.402 supervision, 24.129.603 minimum standards for licensure, 24.129.605 military training or experience, 24.129.612 temporary practice permits, and 24.129.2301 unprofessional conduct and the adoption of NEW RULE I nonroutine applications	))))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On November 10, 2016, the Board of Clinical Laboratory Science Practitioners (board) published MAR Notice No. 24-129-17 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 2040 of the 2016 Montana Administrative Register, Issue No. 21.

2. On December 2, 2016, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the December 9, 2016, deadline.

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

COMMENT 1: All the commenters opposed increasing the active and inactive renewal fees. The commenters stated that the proposed increases will be a hardship on licensees for one or more of the following reasons:

(a) the increase to $100 is nearly double the current $60 active renewal fee;
(b) the increase to $50 is double the current $25 inactive renewal fee;
(c) even if the board hasn't increased licensing fees since 2008, the proposed increases work out to an increase of 8% to 12% per year;
(d) licensees pay their renewal fees and are not reimbursed by their employers;
(e) many licensees did not receive a pay increase last year and their wages have not kept pace with inflation and/or the cost living;
(f) health care reimbursement rates are going down, not up; and
(g) the average salary for a clinical laboratory scientist in Montana is $59,120 and the national average salary is $61,860.

RESPONSE 1: All licensing boards are statutorily mandated by 37-1-134, MCA, to set licensing fees related to its program area that provide the amount of money usually needed for the operation of the board for services. Each licensing board is required to fund its own operations through its licensure fees.

The board cannot set fees according to inflation, cost of living, or the current salaries of licensees. Over the last several years, the board has been operating at a deficit resulting from a decrease in the number of licensees combined with inflationary increases in costs such as rent, supplies, and electricity and a change in the department's method of allocating costs to boards. Roughly 70% of the board's budget is a fixed cost allocation to the board for computer systems, web site support, staff salaries, phone and mail service, etc.

Under 17-2-302, MCA, licensing boards may build a cash reserve for operating expenses, but the cash reserve may not exceed twice the annual appropriation for that year. If a board's cash reserve exceeds twice the annual appropriation, the board will abate renewal fees pursuant to ARM 24.101.301.

The board also notes that both the department and the board continually seek and implement ways to reduce costs associated with board functions. Examples of this are the recent shift to using electronic board books instead of paper ones and having some board meetings by telephone conference instead of in-person attendance.

COMMENT 2: Several commenters asserted that the fee increases will be a hardship because licensees must pay other licensure expenses including those associated with completing annual continuing education (CE), maintaining national certification, and licensure in other jurisdictions. The commenters stated that CE is not always provided by employers and these expenses are not always reimbursed by employers. One commenter stated that complying with multiple CE requirements can cost licensees $300 to $500 in registration fees annually.

RESPONSE 2: While the board requires licensees to complete 14 hours of CE annually, licensees have a significant amount of control over their CE expenditures. Licensees may obtain CE through approved online courses and webinars which usually cost less than live, classroom-style courses. Additionally, the board notes that there are many opportunities for licensees to obtain CE at no charge such as membership in ASCP (American Society of Clinical Pathologists), which includes the opportunity to complete up to six hours of no-cost CE through ASCP. Additionally, CAP (College of American Pathologists), CACMLE (Colorado Association for Continuing Medical Laboratory Education), and LEND (Laboratory Education of North Dakota) offer CE opportunities for clinical laboratory personnel at no charge.

Any licensing, certification, or continuing education requirements imposed by another regulatory entity, and the costs associated therewith, are outside the board's authority. Individual licensees and their employers decide whether additional certification or licensure is necessary and who bears the costs associated with obtaining and maintaining those additional qualifications.

COMMENT 3: Several commenters stated there is currently a workforce shortage and increasing licensing fees will deter future graduates from choosing this profession and working in Montana compared to states that only require national certification. Two commenters also stated that increasing the fees will make it more difficult to find the support to defend licensure and the integrity of the profession.

RESPONSE 3: While recognizing a current workforce shortage, the board does not believe that anticipated future licensure fees are a significant factor for individuals when considering a course of study in college and a future profession.

The board is required under 37-1-134, MCA, to set licensing fees that provide the amount of money usually needed for the operation of the board for services. Each licensing board is required to fund its own operations through its licensure fees. See RESPONSE 1 for more information.

COMMENT 4: One commenter suggested that the board move from annual to biennial renewals, like the Board of Nursing, to reduce paperwork and costs. The commenter further noted the license renewal fee for nurses is $50 per year.

RESPONSE 4: The board has not proposed rule changes to move from annual to biennial license renewal and accordingly will take no action regarding the license renewal cycle.

Additionally, all licensing boards are statutorily mandated by 37-1-134, MCA, to set licensing fees related to its program that provide the amount of money usually needed for the operation of the board for services. Licensure fees are directly impacted by the number of licensees regulated by a board, and boards with fewer licensees generally charge higher licensure fees than boards with more licensees. The board licenses approximately 876 individuals which includes clinical laboratory scientists, clinical laboratory specialists, and clinical laboratory technicians. In contrast, the Board of Nursing licenses approximately 20,000 individuals.

COMMENT 5: One commenter disagreed with a statement during the last board meeting that the board had been fiscally responsible historically. After reviewing the budget information provided by board staff, the commenter stated the board has not had a balanced budget for the last five years. The commenter asked why board personnel costs increased 33% in the last year and asserted that the board's budget and expenses should be more transparent. Specifically, the commenter stated the $50,000 "other expenses" budget line item should be explained in more detail.

The commenter further opined that the fee increases do not benefit the licensees and the board should get back to its core purpose of licensing clinical laboratory personnel and look for ways to do so within a reasonable budget.

RESPONSE 5: The board acknowledges the budget deficit over the last five years and notes that the deficit demonstrates the need for the fee increase.

The increase in personnel costs over the last year resulted from increased time spent by new department staff on board business including licensing, compliance, and legal work. Additionally, the database used by the department to manage the records of all the licensing boards required programming updates and the personnel costs for these updates are shared by all the boards proportionally based on time distribution and number of board licensees.

The board reviews and discusses the budget in open session at every full board meeting. The other expenses item in the budget includes expenses for information technology services staff and legal staff. If the commenter had

requested additional information regarding the other expenses item, department staff would have provided specific components and associated amounts.

The fee increases will benefit the licensees by allowing the board to operate without running a deficit. The board and department continually seek and implement ways to reduce costs associated with board functions.

COMMENT 6: A commenter noted that the board's inspection rules may be redundant because CLIA inspects the clinical laboratories and the CLIA inspector is given a list of lab personnel. The commenter stated that the board's contracted inspector also visited this year and asked for the same list. The commenter complained that, just in the past year, he provided a list of lab personnel to three different state government entities.

RESPONSE 6: Clinical laboratory facilities in Montana are inspected by CLIA every two years. Other government entities have regulatory authority over the clinical laboratory facilities, including the Centers for Medicaid and Medicare of the Department of Health and Human Services (CMS) which certifies clinical laboratory facilities. These regulatory authorities may conduct inspections of clinical laboratory facilities including the licensure of laboratory personnel.

The board contracts with an individual to inspect licenses at every clinical laboratory facility in Montana annually. This inspector also performs inspections for other licensing boards and combines trips to keep costs down for all boards. The inspector has found unlicensed individuals performing clinical laboratory tests.

While the board's rule regarding inspecting licenses at ARM 24.129.405, is not at issue in this rule notice, the board will consider whether to revise its approach to on-site inspections of licenses of clinical laboratory personnel to reduce costs while still safeguarding the public.

COMMENT 7: A commenter stated it is unnecessary for the board to conduct on-site inspections of clinical laboratory personnel licenses because the information is available to the department and board through their licensing records and database. The commenter suggested the board could save a lot of money by eliminating the inspection of licenses entirely, or only conducting on-site inspections of a small sample (e.g., 10%) of clinical laboratories or those having a negative history.

RESPONSE 7: The board notes that the inspector has found unlicensed individuals performing clinical laboratory tests and without an inspection, the unlicensed practice would not have been discovered.

While the board's rule regarding inspecting licenses at ARM 24.129.405, is not at issue in this rule notice, the board will consider whether to revise its approach to on-site inspections of licenses of clinical laboratory personnel to reduce expenses while still safeguarding the public.

Additionally, under 37-1-134, MCA, the board is required to set licensing fees to provide the amount of money usually needed for the operation of board regulatory services. In providing administrative services to the board, the department has advised that the board must increase fees to cover its operating expenses. See RESPONSE 1 for more information.

COMMENT 8: One commenter stated that the board should return to its mission of licensing clinical laboratory personnel and not set inspection rules.

RESPONSE 8: The board protects the public safety, health, and welfare by ensuring that qualified and competent individuals perform clinical laboratory testing. Establishing qualifications for initial licensure, scope of practice, and continued licensure of clinical laboratory personnel is one aspect of the board's role. The board conducts on-site inspections to enforce the licensure and scope of practice requirements for clinical laboratory personnel to further safeguard patients. Additionally, the board's on-site inspections have found unlicensed individuals performing clinical laboratory tests. The board and department will continue to seek and implement ways to reduce costs associated with board functions.

4. The board has amended ARM 24.129.401, 24.129.402, 24.129.603, 24.129.605, 24.129.612, and 24.129.2301 exactly as proposed.

5. The board has adopted NEW RULE I (24.129.606) exactly as proposed.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
VICKI RICE, PRESIDING OFFICER

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

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

Certified to the Secretary of State February 27, 2017.

BEFORE THE BOARD OF MILK CONTROL
AND THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.23.301 pertaining to licensee assessments	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 20, 2017, the Board of Milk Control (board) and the Department of Livestock (department) published MAR Notice No. 32-17-280 regarding the proposed amendment of the above-stated rule at page 127 of the 2017 Montana Administrative Register, Issue Number 2.

2. The board has amended ARM 32.23.301 as proposed.

3. This rule amendment is effective July 1, 2017.

4. The board received no comments or testimony.

/s/ W. Scott Mitchell
W. Scott Mitchell
Chair
Board of Milk Control

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Department of Livestock

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

Certified to the Secretary of State February 27, 2017.

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

In the matter of the amendment of ARM 37.40.830 pertaining to hospice reimbursement	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 6, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-783 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 81 of the 2017 Montana Administrative Register, Issue Number 1.

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

3. No comments or testimony were received.

4. The department intends to apply increases in the hospice reimbursement rates retroactively to October 1, 2016. The implementation date of the rate increase is consistent with the federal approval of the hospice reimbursement rate fee increase and the effective dates of the promulgated federal regulations. Decreases in hospice rates will not be applied retroactively, but will be effective upon adoption of the rule amendment.

/s/ Caroline Warne
Caroline Warne, Attorney
Rule Reviewer

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

Certified to the Secretary of State February 27, 2017.

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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