

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after 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) 438-6122.

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 4.2.101, 4.2.102, 4.5.303,)	PROPOSED AMENDMENT AND
4.7.101, 4.9.101, 4.9.402, 4.10.1003,)	REPEAL
4.10.1011, 4.10.1501, 4.12.729,)	
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4.12.3503, 4.12.3504, 4.12.3505,)	
4.13.1002, 4.13.1005, 4.13.1006,)	
4.13.1007, and 4.16.101 and the)	
repeal of ARM 4.7.101 and 4.12.2607)	
pertaining to updating administrative)	
rule references and citations)	

TO: All Concerned Persons

1. On December 8, 2023, at 9:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of Scott Hart Building, at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than December 4, 2023, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts Street, Helena, Montana, 59620-0201; telephone (406) 444-5402; fax (406) 444-5409; TDD/Montana Relay Service (406) 444-3144; or e-mail agr@mt.gov.

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

4.2.101 MODEL PROCEDURAL RULES (1) The Department of Agriculture adopts and incorporates the Attorney General's model rules as stated in ARM ~~4.3.104~~ 1.3.201 through 1.3.233 together with the exceptions and additions set forth in ARM 4.2.102 ~~and 4.2.103~~.

AUTH: 2-4-202, MCA
IMP: 2-4-202, MCA

REASON: The previous version of the rule cited incorrect rules.

4.2.102 EXCEPTIONS AND ADDITIONS FOR AGRICULTURAL SCIENCES
DIVISION (1) ~~ARM 4.3.204~~ 1.3.307 requirements are modified by 80-8-105(1), MCA.

AUTH: 2-4-202, MCA
IMP: 2-4-202, MCA

REASON: The cited rule was transferred.

4.5.303 NOXIOUS WEEDS (1) The Montana noxious weed seed free forage (NWSFF) certification program includes the noxious weeds set forth in ARM 4.5.206, 4.5.207, 4.5.208, and 4.5.209 ~~4.5.202, 4.5.203, and 4.5.204~~, authorized by 7-22-2101(7)(a)(i), MCA.

(2) The regional forage certification program includes additional noxious weeds that have been so designated by other states and provinces. The department may enter into agreements with other states and/or provinces which will allow forage to be certified on a regional basis.

AUTH: 80-7-909, MCA
IMP: 80-7-903, 80-7-905, MCA

REASON: The cited rules were transferred.

4.7.101 REPORTS (1)(a) All grain merchandisers licensed by ~~80-4-502~~ 80-4-202, MCA, as a grain public warehouse shall file with the department, on forms prescribed and provided by the Montana Department of Agriculture, monthly reports of shipments of grain from individual public warehouses located in Montana.

(b) through (e) remain the same.

(2)(a) All grain merchandisers licensed by ~~80-4-603~~ 80-4-202, MCA, as a grain dealer, or grain dealer/track buyer, shall file with the department, on forms prescribed and provided by the Montana Department of Agriculture, monthly reports of shipments of grain made.

(b) and (c) remain the same.

(3)(a) All grain merchandisers licensed by ~~80-4-603~~ 80-4-202, MCA, as a grain dealer/trucker, shall file with the department on forms prescribed and provided by the Montana Department of Agriculture, monthly reports of shipments of grain made directly from the producing area (farm or ranch) .

(b) and (c) remain the same.

AUTH: ~~80-4-209, 80-4-407~~, MCA
IMP: ~~80-4-101, 80-4-202, 80-4-203, 80-4-204, 80-4-205, 80-4-206, 80-4-207, 80-4-208, 80-4-209, 80-4-402, 80-4-502, 80-4-603, 80-4-421, 80-4-406, 80-4-405, 80-4-428, 80-4-429, 80-4-427, 80-4-407~~, MCA

REASON: These statutes were replaced by the Agricultural Warehouse, Commodity Dealer, and Grain Standards Act.

4.9.101 ORGANIZATIONAL RULES (1) remains the same.

AUTH: 2-4-201, ~~2-14-121~~, 2-15-112, 2-15-121, 80-11-205 MCA

IMP: 2-4-201, 80-11-201 MCA

REASON: This change addresses a typographical error.

4.9.402 REQUIREMENTS FOR REPORTS (1) All monthly grain merchandiser report forms shall be sent out from the Montana wheat and barley committee with an enclosed envelope addressed to the committee and these reports shall be completed and returned to the committee after being properly signed and sworn to each and every month. These reports shall be filed with the committee within 20 days after the close of the business for the month in which the report is being filed. Additional sections of this form may be used to comply with 80-4-407 ~~80-4-209~~, MCA.

(2) remains the same.

AUTH: 80-11-205, MCA

IMP: 80-11-205, 80-11-207, MCA

REASON: This statute was replaced by the Agricultural Warehouse, Commodity Dealer, and Grain Standards Act.

4.10.1003 ABILITY TO STAY IN BUSINESS (1) Where a determination of the appropriate amount of the penalty must be made under ~~80-80-306~~ 80-8-306(5)(d), MCA the "effect on the person's ability to stay in business" will be considered when the charged person submits bonafide financial information accompanied by appropriate documentary evidence. The charged person may request a reduction in a civil penalty or an alternate payment schedule.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

REASON: This change addresses a typographical error.

4.10.1011 NONCOMPLIANCE WITH PESTICIDE OR PESTICIDE CONTAINER DISPOSAL, LABELING OR HANDLING REQUIREMENTS AND STANDARDS (1) The following are considered violations:

- (a) failure to comply with label directions for disposal of a pesticide;
- (b) failure to comply with ARM 4.10.801 through 4.10.808 (Rinsing and Disposing of Pesticide Containers);
- (c) failure to comply with pesticide label directions for handling such as application instructions, storage, protective clothing or equipment, precautionary

statements, restrictions, re-entry intervals, mixing and loading instructions and others; or

(d) distribution, sale, or offering for sale or delivering for transportation, or transport in intrastate commerce between points in the state any pesticide that is not labeled as required by ARM ~~4.10.702~~ 4.10.1009 through 4.10.1011.

(2) For the purpose of determining civil penalties, violations in (1)(a) through (d) shall constitute misuse. If a misuse violation results in proven exposure of humans, agricultural commodities, or livestock, or proven harm to human health, agricultural commodities, livestock, or the environment, the amount of a civil penalty may be determined by using the penalty matrix established for 80-8-306(5)(e)(i), MCA. All other violations under this rule will be subject to civil penalties established in ARM 4.10.1005(4)(j) of the civil penalty matrix.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

REASON: This rule was replaced.

4.10.1501 DEFINITION OF TERMS These definitions apply to all regulations and rules adopted under the Montana Pesticides Act, Title 80, chapter 8, MCA unless specified differently by statute or individual rules.

(1) through (3) remain the same.

(4) "Acute dermal LD₅₀" means a single dermal dose of a substance, expressed as milligrams per kilogram of body weight, that is lethal to 50% of the test population of animals within a specified time period under specified test conditions as prescribed in the Registration Guidelines, ~~40 CFR 162.40 et seq., and adopted by the department.~~

(5) "Acute LC₅₀" means a concentration of a substance, expressed as parts per million parts of medium, that is lethal to 50% of the test population animals under test conditions as specified in the Registration Guidelines, ~~40 CFR 162.40 et seq., and adopted by the department.~~

(6) through (55) remain the same.

(56) "Inhalation LC₅₀" means concentration of a substance, expressed in milligrams per liter of air or parts per million parts of air, that is lethal to 50% of the test population of animals under test conditions as specified in the Registration Guidelines, ~~40 CFR 162.40 et seq., and adopted by the department.~~

(57) through (66) remain the same.

(67) "No discernible adverse effect" means no adverse effect observable within the limitations and sensitivity specified in the Registration Guidelines, ~~40 CFR 162.40 et seq., and adopted by the department.~~

(68) through (82) remain the same.

(83) "Registration guidelines" means the guidelines and standards used and published by the agency and adopted by the department in reviewing, approving, modifying, denying, suspending, or cancelling the registration of a pesticide formulation (~~40 CFR 162.40 et seq., and adopted by the department.~~)

(84) through (94) remain the same.

(95) "Subacute dietary LC₅₀" means a concentration of a substance, expressed as parts per million in feed, that would be lethal to 50% of the test population of animals under test conditions as specified in the Registration Guidelines, ~~40 CFR 162.40 et seq., adopted by the department.~~

(96) through (105) remain the same.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The CFR rules referenced in ARM 4.10.1501(4), (5), (56), (67), (83) and (95) were changed and are not needed.

4.12.729 TRANSFER OF LIQUIDS (1) through (5) remain the same.

AUTH: 80-10-503, MCA

IMP: ~~80-4-503~~, 80-10-503, MCA

REASON: This change addresses a typographical error.

4.12.731 LIQUID LEVEL GAUGING DEVICES (1) through (3) remain the same.

AUTH: 80-10-503, MCA

IMP: ~~80-4-503~~ 80-10-503, MCA

REASON: This change addresses a typographical error.

4.12.742 PRE-EXISTING FACILITIES (1) and (2) remain the same.

AUTH: ~~80-10-530~~ 80-10-503, MCA

IMP: 80-10-503, MCA

REASON: This change addresses a typographical error.

4.12.743 TABLES (1) through (4) remain the same.

AUTH: ~~80-10-530~~ 80-10-503, MCA

IMP: 80-10-503, MCA

REASON: This change addresses a typographical error.

4.12.1027 DATE OF TERMINATION OF STORAGE CONTRACTS EVIDENCED BY WAREHOUSE RECEIPTS (1) and (2) remain the same.

AUTH: 80-4-403, MCA

IMP: ~~80-4-535~~, 80-4-536, MCA

REASON: This statute was previously updated but not removed.

4.12.1407 RIGHT TO HOLD NURSERY STOCK FOR INSPECTION – CONDEMNATION OF PRODUCTS (1) through (3) remain the same.

AUTH: 80-1-102, 80-7-109, ~~80-7-131~~, MCA

IMP: 80-7-108, 80-7-110, ~~80-7-118~~, MCA

REASON: These statutes were replaced by the Montana Quarantine and Pest Management Act.

4.12.1409 QUARANTINE OF PLANT MATERIALS AND NURSERIES (1) and (2) remain the same.

AUTH: 80-1-102, ~~80-7-205~~, 80-7-402, MCA

IMP: ~~80-7-121~~, ~~80-7-205~~, 80-7-402, MCA

REASON: These statutes were replaced by the Montana Quarantine and Pest Management Act.

4.12.1431 CIVIL PENALTIES – MATRIX (1) through (4) remain the same.

AUTH: ~~80-7-102~~, 80-7-106, 80-7-135, MCA

IMP: 80-7-135, MCA

REASON: This statute was repealed and replaced.

4.12.1438 FEDERAL FEES OR CHARGES (1) remains the same.

AUTH: 80-7-108, ~~80-7-122~~, MCA

IMP: 80-7-108, ~~80-7-122~~, MCA

REASON: This change removes this statute which was previously repealed and replaced but not removed.

4.12.1439 CLEAN PLANT AND INDEXING CERTIFICATION (1) through (4) remain the same.

AUTH: 80-7-108, ~~80-7-122~~, 80-7-402, MCA

IMP: 80-7-108, ~~80-7-122~~, 80-7-402, MCA

REASON: This statute was repealed and replaced.

4.12.1440 DEPARTMENT CLEAN PLANT AND INDEXING CERTIFICATION RESPONSIBILITIES (1) remains the same.

AUTH: 80-7-108, ~~80-7-122~~, 80-7-402, MCA

IMP: 80-7-108, ~~80-7-122~~, 80-7-402, MCA

REASON: These statutes were repealed and replaced.

4.12.1441 CLEAN PLANT AND INDEXING CERTIFICATION PLANS
(1) remains the same.

AUTH: 80-7-108, ~~80-7-122~~, 80-7-402, MCA
IMP: 80-7-108, ~~80-7-122~~, 80-7-402, MCA

REASON: These statutes were repealed and replaced.

4.12.1442 APPLICANT AND CERTIFIED CLEAN PLANT AND INDEXING
ENTITY RESPONSIBILITIES (1) remains the same.

AUTH: 80-7-108, ~~80-7-122~~, 80-7-402, MCA
IMP: 80-7-108, ~~80-7-122~~, 80-7-402, MCA

REASON: These statutes were repealed and replaced.

4.12.1443 CLEAN PLANT AND INDEXING CERTIFICATION
ENFORCEMENT (1) remains the same.

AUTH: 80-7-108, ~~80-7-122~~, 80-7-402, MCA
IMP: 80-7-108, ~~80-7-122~~, 80-7-402, MCA

REASON: These statutes were repealed and replaced.

4.12.1444 PHYTOSANITARY INSPECTION AND CERTIFICATION COSTS
– FEES (1) and (2) remain the same.

AUTH: 80-1-102, 80-7-108, ~~80-7-122~~, MCA
IMP: 80-7-108, ~~80-7-122~~, MCA

REASON: This change removes this statute which was previously repealed and replaced but not removed.

4.12.2205 MONTANA APPLE GRADE STANDARDS (1) remains the same.

AUTH: 80-3-303, MCA
IMP: ~~80-3-307~~, 80-3-311, MCA

REASON: This change addresses a typographical error.

4.12.2615 VERIFICATION OF 'MONTANA-GROWN' PRODUCE OR
PRODUCE 'GROWN' IN MONTANA (1) through (3) remain the same.

AUTH: 80-3-303, ~~80-3-709~~, MCA
IMP: 80-3-303, ~~80-3-701~~, MCA

REASON: Statutes regarding itinerant merchants have been repealed.

4.12.3002 HANDLING PROCEDURES (1) remains the same.

AUTH: 80-5-139, MCA
IMP: ~~80-5-104~~, 80-5-123, 80-5-130, 80-5-133, ~~80-5-202~~, MCA

REASON: Section 80-5-104, MCA was repealed and replaced and 80-5-202, MCA was renumbered.

4.12.3008 LICENSE YEAR (1) remains the same.

AUTH: 80-5-139, ~~80-5-206~~, MCA
IMP: 80-5-130, ~~80-5-202~~, MCA

REASON: These statutes were renumbered.

4.12.3501 GENERAL REQUIREMENTS (1) The Department of Agriculture, pursuant to 80-3-311 and 80-3-315, MCA, adopts grade standards and inspection procedures to enforce those grades as further set out in these rules. For the purposes of grading certified seed potatoes, the department hereby adopts by reference the United States Standards for Grades of Potatoes as specified in 7 CFR Part 51 sections 1540 through 1566 of the January 1, 1998 edition with the exceptions specified in ARM 4.12.3501 through ~~4.12.3504~~ 4.12.3505.

(2) through (10) remain the same.

AUTH: ~~80-3-110~~, 80-3-311, MCA
IMP: ~~80-3-104~~, ~~80-3-105~~, ~~80-3-109~~, 80-3-311, 80-3-312, ~~80-3-303~~, MCA

REASON: This rule was changed to include an additional rule added to ARM and to remove and replace statutes that were subsumed by the Montana Produce Act.

4.12.3502 SEED CLASS DESIGNATION (1) remains the same.

AUTH: ~~80-3-110~~, 80-3-311, MCA
IMP: ~~80-3-104~~, ~~80-3-105~~, 80-3-311, 80-3-312, MCA

REASON: These statutes were replaced by the Montana Produce Act.

4.12.3503 BLUE TAGS (1) remains the same.

AUTH: ~~80-3-110~~, 80-3-311, MCA
IMP: ~~80-3-104~~, ~~80-3-105~~, 80-3-311, 80-3-312, MCA

REASON: These statutes were replaced by the Montana Produce Act.

4.12.3504 RED TAGS (1) remains the same.

AUTH: ~~80-3-110~~, 80-3-311, MCA

IMP: ~~80-3-104~~, ~~80-3-105~~, 80-3-311, 80-3-312, MCA

REASON: These statutes were replaced by the Montana Produce Act.

4.12.3505 BULK SHIPMENTS (1) and (2) remain the same.

AUTH: ~~80-3-110~~, 80-3-311, MCA

IMP: ~~80-3-104~~, ~~80-3-105~~, 80-3-311, 80-3-312, MCA

REASON: These statutes were replaced by the Montana Produce Act.

4.13.1002 GRAIN STANDARDS (1) and (2) remain the same.

AUTH: ~~80-4-111~~, ~~80-4-112~~, 80-4-704, 80-4-705, MCA

IMP: ~~80-4-111~~, ~~80-4-112~~, 80-4-704, 80-4-705, MCA

REASON: These statutes were replaced by the Agricultural Warehouse, Commodity Dealer, and Grain Standards Act.

4.13.1005 MALTING BARLEY GERMINATION (1) and (2) remain the same.

AUTH: 80-4-709, MCA

IMP: 80-4-704, 80-4-709, ~~80-4-710~~, 80-4-711, MCA

REASON: This statute was repealed and replaced.

4.13.1006 CHIT (1) and (2) remain the same.

AUTH: 80-4-709, MCA

IMP: 80-4-704, 80-4-709, ~~80-4-710~~, 80-4-711, MCA

REASON: This statute was repealed and replaced.

4.13.1007 STARCH STRENGTH (1) and (2) remain the same.

AUTH: 80-4-709, MCA

IMP: 80-4-704, 80-4-709, ~~80-4-710~~, 80-4-711, MCA

REASON: This statute was repealed and replaced.

4.16.101 ORGANIZATIONAL RULE (1) The Montana Agriculture Development Council ("council") was created in 1987 by ~~2-15-1817, MCA~~, and transferred to the Department of Agriculture by 2-15-3015.

(2) through (4) remain the same.

AUTH: 2-4-201, 90-9-202, MCA

IMP: 2-4-201, 90-9-202, MCA

REASON: This change improves readability of the rule without the repealed statute.

4. The department proposes to repeal the following rules:

4.7.101 REPORTS

AUTH: 80-4-209, MCA

IMP: 80-4-101, 80-4-202, 80-4-203, 80-4-204, 80-4-205, 80-4-206, 80-4-207, 80-4-208, 80-4-209, MCA

REASON: This rule was repealed by the Agricultural Warehouse, Commodity Dealer, and Grain Standards Act.

4.12.2607 PRODUCE WHOLESALÉ – MEANING OF TERM – WHO MAY TRANSPORT PRODUCE

AUTH: 80-3-602, MCA

IMP: 80-3-610, MCA

REASON: This rule was eliminated by the Montana Produce Act.

OVERALL REASON: As part of the Governor's red tape relief effort, all rules were looked at to correct all errors that might be present. This is meant to correct the entirety of the rules stemming from Title 80, MCA that would create no change in practice.

FINANCIAL IMPACT: None of these changes will have any financial impact and are merely meant to correct technical or typographical errors.

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: Cort Jensen, Department of Agriculture, 302 N. Roberts Street, Helena, Montana, 59620-0201; telephone (406) 444-5402; fax (406) 444-5409; or e-mail cojensen@mt.gov, and must be received no later than 5:00 p.m., December 15, 2023.

6. Cort Jensen, Department of Agriculture, 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. A written request may be mailed or delivered to the contact person in paragraph 5 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://sosmt.gov/ARM/Register>.

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 and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Christy Clark
Christy Clark
Director
Department of Agriculture

Certified to the Secretary of State November 7, 2023.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 4.12.3104 and the adoption of) PROPOSED AMENDMENT AND
NEW RULE I pertaining to Seed) ADOPTION
Rules)

TO: All Concerned Persons

1. On December 8, 2023, at 10:30 a.m., the Department of Agriculture will hold a public hearing in Room 225 of Scott Hart Building, at Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than December 4, 2023 to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts Street, Helena, Montana, 59620-0201; telephone (406) 444-5402; fax (406) 444-5409; TDD/Montana Relay Service (406) 444-3144; or e-mail agr@mt.gov.

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

4.12.3104 LABELING FOR SEED KIND AND VARIETY (1) Agricultural seeds must be labeled with kind and variety information as stated in this rule:
(a) The following agricultural seeds must be labeled to show kind and variety:
(i) barley;
(ii) bean, field;
(iii) beet, field;
(iv) canola;
(v) chickpeas (garbanzo beans);
~~(v)~~ (vi) corn, field;
~~(vi)~~ (vii) hemp;
(viii) lentils;
~~(vii)~~ (ix) oats;
~~(viii)~~ (x) peas, field;
~~(ix)~~ (xi) safflower;
~~(x)~~ (xii) soybean;
~~(xi)~~ sunflower; and
(xiii) triticale; and
~~(xii)~~ (xiv) wheat.
~~(b) The following agricultural seeds shall be labeled to show the kind and variety name or the kind and the words "variety not stated" (VNS):~~
~~(i) alfalfa;~~

- ~~(ii) brome, smooth;~~
- ~~(iii) clover, crimson;~~
- ~~(iv) clover, red;~~
- ~~(v) clover, white;~~
- ~~(vi) corn, pop;~~
- ~~(vii) fescue, tall;~~
- ~~(viii) flax;~~
- ~~(ix) millet, foxtail;~~
- ~~(x) pea, forage;~~
- ~~(xi) rye;~~
- ~~(xii) sorghum;~~
- ~~(xiii) sorghum-sudan, hybrid;~~
- ~~(xiv) sudan grass; and~~
- ~~(xv) trefoil, birdsfoot.~~

~~(c) (b)~~ Any kind of agricultural seed not listed in ~~(1)(a) or (b)~~ above may be stated as labeled by just kind only or as by kind and variety.

~~(2) If the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety." The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of 5% and are named on the label, the name of each variety shall be accompanied by the percentage of each.~~

(2) The words "kind" and "variety" are not needed so long as the actual variety name and kind are on the label. If only one variety is present the term "pure seed" may be used.

(3) When two or more varieties are present in excess of 5% and are listed on the label, the name of each variety must be accompanied by the percentage of each in the seed mix.

(4) If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" must be clearly associated with the respective percentages.

AUTH: 80-5-139, MCA

IMP: 80-5-123, MCA

Reason: At the request of the seed trade industry this list was modernized to include proper labeling options for the current crops of Montana consistent with what varietal information is needed to comply with intellectual property laws and concerns. ARM 4.12.3104(1)(b) was deemed redundant. ARM 4.12.3104(2) was written unclearly and reworded.

Economic Impact: The vast majority of the seed trade will have no direct financial impact from these changes. Some will have small amounts of savings or cost as they rework labels to comply with the added crops in (1)(a). The department will work with them to mitigate these costs.

4. The department proposes to adopt the following rule:

NEW RULE I GENUINE GROWER DECLARATION FORM (1) What is a genuine grower declaration form? A document required by state law when seeds are cleaned or conditioned that creates a written record to help comply with intellectual property laws.

(2) What is required in a genuine grower declaration form? The grower declaration must contain:

(a) a statement that the grower either grew the seeds or from whom they received them;

(b) the kind and variety of seed if known; and

(c) a signature by the person requesting seed cleaning.

(3) When is a genuine grower declaration form needed? Before any seed is cleaned or conditioned on equipment not owned by the farmer.

(4) Who keeps a copy of the genuine grower declaration form? Both the farmer and the business providing cleaning or conditioning services or rental equipment.

(5) Can the genuine grower declaration form be electronic? Yes.

(6) Must we use the genuine grower declaration form on the department's website? No. It is only an example. Each business can create a different form so long as it contains the requirements of this rule.

AUTH: 80-5-139, MCA

IMP: 80-5-134, MCA

Reason: House Bill 487 (2023) required the department to adopt a genuine grower declaration form at the request of the seed trade industry. We used the existing standard fields from the form that the industry had adopted from North Dakota with the expansion of allowing for seeds not grown by the farmer after the comments by the Senate Agricultural Committee.

Economic Impact: The costs of compliance with this law are anticipated to be close to zero as most in the trade use some version of this form all ready.

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: Cort Jensen, Department of Agriculture, 302 N. Roberts Street, Helena, Montana, 59620-0201; telephone (406) 444-5402; fax (406) 444-5409; or e-mail cojensen@mt.gov, and must be received no later than 5:00 p.m., December 15, 2023.

6. Cort Jensen, Department of Agriculture, 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 paragraph 5 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://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and the sponsor has been contacted.

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

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Christy Clark
Christy Clark
Director
Department of Agriculture

Certified to the Secretary of State November 7, 2023.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING AND
ARM 24.156.403, 24.156.405,	)	EXTENSION OF COMMENT
24.156.813, 24.156.1622, and	)	PERIOD ON PROPOSED
24.156.1623 and the repeal of ARM	)	AMENDMENT AND REPEAL
24.156.1621, 24.156.1624, and)	
24.156.1701 pertaining to physician)	
assistants)	

TO: All Concerned Persons

1. On August 25, 2023, the Board of Medical Examiners (agency) published MAR Notice No. 24-156-94 pertaining to the proposed amendment and repeal of the above-stated rules at page 813 of the 2023 Montana Administrative Register, Issue Number 16.

2. On October 6, 2023, the agency published a notice of extension of comment period for MAR Notice No. 24-156-94 at page 1149 of the 2023 Montana Administrative Register, Issue Number 19.

3. A public hearing was held on September 15, 2023, and a subsequent public hearing was scheduled for October 30, 2023, but not held due to technical difficulties. A second subsequent public hearing will be held to accept further comments. Comments previously submitted for this rulemaking will be retained and considered by the agency.

4. On December 11, 2023, at 8:30 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/88970870128>
Meeting ID: 889 7087 0128, Passcode: 290738
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 889 7087 0128, Passcode: 290738

5. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., December 15, 2023.

6. 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 department no later than 5:00 p.m., on December 4, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

BOARD OF MEDICAL EXAMINERS
JAMES GUYER, M.D., PRESIDENT

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 7, 2023.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 37.40.1018 and 37.40.1127) AMENDMENT
pertaining to Community First Choice)
services and self-directed personal) NO PUBLIC HEARING
care services) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to amend the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 23, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

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

37.40.1018 SELF-DIRECTED COMMUNITY FIRST CHOICE SERVICES:
PROVIDER REQUIREMENTS (1) through (6) remain the same.

~~(7) Effective January 1, 2015, self-directed CFCS provider agencies must provide quarterly reports for all self-directed personal care attendants employed by the agency, in the format specified by the department. The quarterly report must include the names, addresses, and phone numbers, wages, years of experience in aging and disability services, availability of employee-sponsored health insurance, whether a background check was conducted, and, if so, whether it was a fingerprint criminal background check.~~

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

37.40.1127 SELF-DIRECTED PERSONAL ASSISTANCE SERVICES:
PROVIDER REQUIREMENTS (1) through (6) remain the same.

~~(7) Effective January 1, 2015, self-directed PAS provider agencies must provide quarterly reports for all self-directed personal care attendants employed by the agency, in the format specified by the department. The quarterly report must include the names, addresses, and phone numbers, wages, years of experience in~~

~~aging and disability services, availability of employee-sponsored health insurance, whether a background check was conducted, and, if so, whether it was a fingerprint criminal background check.~~

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes amending the above-stated rules to remove the requirement for self-directed personal assistance service providers and self-directed Community First Choice providers to make quarterly reports of personnel information to the department. These proposed rule amendments are necessary to align with an April 14, 2017, decision issued by the Montana First Judicial District Court in the case of *Summit Independent Living, et al. v. State of Montana Department of Public Health and Human Services* (Lewis and Clark County Cause No. CDV-2015-620), in which the district court found the reporting requirements constituted an unlawful delegation of legislative authority. See Memorandum and Order on Cross-Motions for Summary Judgment. The district court subsequently entered final judgment on October 31, 2017, declaring the reporting requirements to be invalid. The department did not appeal the district court's ruling.

Since entry of the district court's order and judgment, the department has not enforced the reporting requirements. By amending the rules to remove the reporting requirements, the department aims to ensure the rules align with the district court's decision and reflect the fact that the department is not requiring providers to adhere to the reporting requirements. The proposed rule amendments are intended to promote clarity and consistency for all stakeholders involved.

Fiscal Impact

The proposed rule amendments have no anticipated fiscal impact.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Bailey Yuhas, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on December 15, 2023. Comments may also be faxed to (406) 444-9744 or e-mailed to hhsadminrules@mt.gov.

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 Bailey Yuhas at the above address no later than 5:00 p.m., December 15, 2023.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be one person based on there being a total of 18 enrolled self-directed personal assistance service providers and self-directed Community First Choice providers.

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

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

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

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

12. 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 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/ Robert Lishman

Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton

Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State November 7, 2023.

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

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 38.5.2202 and 38.5.2302	)	AMENDMENT
pertaining to pipeline safety)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Service Regulation proposes to amend the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on December 5, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (800) 646-6150; fax (406) 444-7618; or e-mail pschelp@mt.gov.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before ~~August 5, 2022~~ November 17, 2023. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

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

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before ~~August 5, 2022~~ November 17, 2023. A copy of the referenced CFRs is available from the United States Department of Transportation, Office of

Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA

IMP: 69-3-207, MCA

REASON: The proposed amendment of ARM 38.5.2202 and 38.5.2302 is necessary to allow the department to use the most recent version of federal rules applicable to Montana's pipeline safety programs. Regular amendments of these rules are also necessary to remain in compliance with federal funding requirements. The referenced regulations may be reviewed at the department's offices.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to the Department of Public Service Regulation in person or by mail at 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (800) 646-6150; fax at (406) 444-7618; or e-mail at pschelp@mt.gov. Such comments must be received no later than 5:00 p.m., December 15, 2023. Please reference Docket No. 2023.10.092 when submitting a comment.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

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 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 two entities based on 20 entities affected.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to the Department of Public Service Regulation, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, faxed to (406) 444-7618, emailed to pschelp@mt.gov, 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://sosmt.gov/ARM/Register>.

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

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

/s/ DANIEL POLKOW

Daniel Polkow
Rule Reviewer

/s/ JAMES BROWN

James Brown
President
Public Service Commission

Certified to the Secretary of State November 7, 2023.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 4.13.1001B pertaining to State)
Grain Lab Fee Schedule)

TO: All Concerned Persons

1. On September 8, 2023, the Department of Agriculture published MAR Notice No. 4-23-280 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 927 of the 2023 Montana Administrative Register, Issue Number 17.

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

4.13.1001B GRAIN FEE SCHEDULE (1) through (11) remain as proposed.
(12) Pulse and Processed Commodity Fee Schedule under the Agricultural Marketing Act (AMA):

(a) Effective Date: The effective date of this rule is January 1, 2024.

(b) General Provisions: General provisions applying to all sections of this rule are as follows, including hourly rate, overtime and holiday rates.

(c) Fees for official services provided under the Agricultural Marketing Act of 1946 (AMA) as amended:

(d) Sampling Fees: Sampling fees for grade or phytosanitary certification:

(i) Bulk Samples: Bulk samples from boxcars, hopper cars,
truck/trailers.....~~\$18.00~~ 17.40
per unit

(A) Additional probes (in addition to original sampling
charges).....~~\$18.00~~ 17.40
per unit

(ii) Sealing: Metal Seals

DT or Probe per Seal; Additional Labor and hourly charges may
apply.....~~\$3.00~~ 2.90 per
seal

Supervise elevator personnel applying seals (recording seals on
certificate).....~~\$4.80~~ \$4.64
per unit

The Montana State Grain Laboratory is not responsible for the seals after Montana State Grain Laboratory personnel leave the applicant's property. It is the applicant's responsibility to confirm that all seals have been applied by Montana State Grain Laboratory personnel to their satisfaction.

(iii) Bagged Lots: bagged lots or totes.....Hourly Rate

(e) Inspection Fee:

(i) Grade Only: grade only per lot or submitted sample: field run.....	\$28.80	<u>\$27.84</u>	per sample
(ii) Grade Only: grade only per lot or submitted sample: other than field run.....	\$24.00	<u>\$23.20</u>	per sample
(iii) Single Factor Determination: one factor only determination.....	\$8.40	<u>\$8.12</u>	
(iv) Additional: additional statements, factors, or results as requested by the applicant.....	\$6.00	<u>\$5.80</u>	per factor
(f) Composite Sample Preparation (per sample in composite).....	\$1.50	<u>\$1.45</u>	per sample
(i) Composite Sample Preparation (per sample, if requested after grade).....	\$3.30	<u>\$3.19</u>	per sample
(ii) Seed Count per Ounce.....	\$6.00	<u>\$5.80</u>	per ounce
(iii) Return shipping and handling post grading (not to exceed \$30/month).....	\$3.60	<u>\$3.48</u>	per sample
(g) Laboratory Analysis Fee:			
(i) Falling Number Determinations: falling number determination for wheat.....	\$21.60	<u>\$20.88</u>	per sample
<u>(h) Commodity Cooperative Service Agreement Fees. In addition to all other applicable fees, commodity cooperative service agreement fees for commodity inspection services (pulses, hops, and miscellaneous processed commodities), excluding rice, will be assessed at the current percentage rate identified in FGIS Directive 9180.74 (Service Fees and Billing Codes, Attachment 4.) The assessed fees must exclude travel, mailing expenses, and state and local taxes. Invoices will identify assessed commodity cooperative service agreement fees as separate line items.</u>			

(13) remains as proposed.

AUTH: 80-4-403, 80-4-721, MCA

IMP: 80-4-721, MCA

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: FGIS commented that they now require the federal portion of fees to not be listed in the total fees and our rules should reflect that.

RESPONSE 1: As that is the way the federal agency needs to be and as it will have no financial impact on those who pay the fees, the department is amending and adopting the rule to align with the federal regulatory agency's requirements.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Christy Clark
Christy Clark
Director
Department of Agriculture

Certified to the Secretary of State November 7, 2023.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.94.3101 and 8.94.3102)
pertaining to the administration of the)
Montana Historic Preservation Grant)
(MHPG) Program)

TO: All Concerned Persons

1. On October 6, 2023, the Department of Commerce published MAR Notice No. 8-94-204 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1118 of the 2023 Montana Administrative Register, Issue Number 19.

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

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: A comment stated it should say 2025 session in the "When will funds be available?" section of the guidelines in the sentence "Awards will be made during the 2023 legislative session."

Response 1: The department will update the sentence with the correction.

Comment 2: A comment stated that the program is game-changing for the care and maintenance of historic properties in Montana. There is a backlog of deferred maintenance out there and it is hoped the program will continue for many more years.

Response 2: Thank you for your comment.

Comment 3: Several comments requested the department to consider flexibility in the match requirement by allowing pre-award work to count towards match and considering in-kind contributions since rural non-profits and museums may not have the ability for cash match.

Response 3: The department's guidelines provide flexibility with the type of match allowed in the form of cash, grants, loans, in-kind, and other forms of capital. The department will consider including previous components of a project as a match.

Comment 4: A comment asked when the new guidelines will be completed and go into effect.

Response 4: The updated guidelines will be effective November 18, 2023.

Comment 5: Several comments were received stating the department should reconsider the ineligibility of state and federal applicants since many state and federal agencies manage significant historic sites in Montana that need assistance. These agencies are responsible for these structures on behalf of the public. There are not enough funds for these agencies to run their programs, cover administrative costs, and maintain historic buildings. These sites attract tourist dollars, which in turn fund the MHPG program.

Response 5: The department recognizes the importance of the many historic sites state and federal agencies own and their link to tourism across the state. The guidelines were designed in consideration of the various needs and projects across the state. The legislature has awarded three state agency projects in the last two cycles of the program. The department will consider including state and federal agencies as eligible applicants.

Comment 6: Several comments were received stating the requirement that projects "be open to or highly visible to the public" is a difficult if not impossible task for some projects, like museum collections. Out of necessity for the curation and care of such collections, these are stored in spaces that are not open or visible to the public. Commenters suggest that "public benefit" could be a requirement for eligible projects and that its definition provides greater flexibility.

Response 6: House Bill 12 (HB 12) was amended in the 2023 legislative session to add that projects funded must provide that a significant portion of the facility be open to public access and use. Projects that confer only a private benefit are not eligible. Additionally, HB 12 was amended to add criteria for the anticipated public benefit, including the extent the site or building will be open to the public and the degree of immediate facility use after project completion. If a museum is open to the public and confers a public use, they would be able to meet this criterion even if the project was for a museum collection that was not public. The guidelines were designed to balance all required criteria and applicants may score higher or lower in various categories while still ranking high overall.

Comment 7: Several comments were received stating that nonprofit and public owners should be required to match the total project cost at a lesser percentage than private owners. For nonprofit owners, especially, there are many potential projects coming from rural communities and volunteer groups with limited experience and capacity to apply for and manage grants, yet this support is needed to carry out their projects. Moreover, private owners have access to a more varied pool of financing and revenue options than nonprofit and public owners. Requiring a smaller match for nonprofit groups and government agencies would help balance this need. For example, nonprofit and public owners could be required to provide a 20% match while private owners could be required to provide a 50% match.

Response 7: The guidelines aim to meet the requirements of the legislation in making both public and private entities eligible for grant funding. The guidelines aim to provide flexibility in the types of matches accepted to meet the needs of all types of applicants. Private business applicants made up 8% of awarded projects in the last two cycles, and those have been to support small-scale local historic preservation efforts. The department will consider increasing the match requirement for private applicants.

Comment 8: Several comments were received requesting the department include a glossary of definitions or more explanatory content in the guidelines. Some terms are unclear. For example, "historic district" under III.a. Within the field of historic preservation, an "historic district" is a very specific thing. It is a type of historic 3 designation on local, state, and national historic registries as a significant group of sites, buildings, structures, or objects that are united historically, architecturally, or culturally. Is this the MHPG definition? Likewise, "permanent security infrastructure" under Preservation Activities on page 6., "stand-alone activities" under Preservation Scope of Work on page 7, and "Other forms of capital" under Eligible Funding on page 10.

Response 8: The department will consider incorporating a glossary as a resource to support applicants. Department staff will provide support and technical assistance to assist applicants with submitting the most successful and competitive application related to their specific project. The department recognizes that there is local, state, and federally recognized historic districts as noted in our guidelines. A contributing property for any local, state, or federal historic district would be eligible as a historic site under our MHPG guidelines.

Comment 9: Several comments were received saying that once any amendments are made through this process and the application opened, no additional changes should be made until after the review process is complete and awards are determined. Changing rules and regulations in the middle of a grant round brings a great deal of uncertainty to the applicant and may deter applicants from participating in the program, thereby jeopardizing the future of this very important resource.

Response 9: The department may not change or amend the program once the final rules are adopted. The legislature may make amendments to the program prior to award at their discretion. Department staff have no decision-making authority over any application and only provide advisory recommendations to the legislature.

Comment 10: A comment was received that the grant cycle should be held annually as submitting applications and supplemental materials eighteen months before awards is difficult for smaller organizations.

Response 10: There are specific requirements for the MHPG program, which are listed in 22-3-1305, MCA, and must be used as the basis for these guidelines. The requirement in 22-3-1305, MCA states that applicants must submit a grant proposal to the department by March 1 of the year preceding the convening of a regular

legislative session which is held biennially. An annual cycle would not meet the requirements set forth by the legislature.

Comment 11: A comment was received stating that the criteria are solid and reflects the interests of the committee who created the program.

Response 11: Thank you for your comment.

Comment 12: A comment was received asking to reconsider the scoring within the criteria to give historic significance more weight.

Response 12: The guidelines were designed to balance both economic impact and heritage value. The draft guidelines have Criterion D related to historic significance as weighted with the most points. Additionally, the guidelines have a four-level scoring system (0, 1, 2, 3) which means each criterion's scoring holds more weight than in previous cycles. The department will consider updating the guidelines to increase the scoring related to Criterion D.

Comment 13: A comment was received asking if the draft guidelines will still consider local governments (cities and counties) to be eligible applicants.

Response 13: Local governments, both cities and counties, are still considered eligible applicants in the draft guidelines.

Comment 14: A comment was received requesting local governments be at a lower match rate than for-profits and not at a 50% match.

Response 14: All applicants are required to provide a 20% match in the guidelines.

Comment 15: A comment was received stating that state and federal agencies should not be included as eligible applicants since many museums are run by part-time boards and staff on limited budgets. State and federal entities have access to the appropriations processes, by making departmental requests. Cities and counties do not have access to the appropriations process. The Museums Act was to be a funnel to those who cannot play the government's game. Exemptions should be added for "friends of" groups and support groups for federal agencies that are independent non-profits.

Response 15: The current guidelines allow non-profits to apply on behalf of historic sites.

Comment 16: A comment was received in support of museums' applications for storage, collections, support, and logistics remaining eligible.

Response 16: There are established criteria for the Montana Historic Preservation Grant program, which were used as the basis for these guidelines. Operational funds and personnel services are not eligible activities. However, support for

storage and collections in the form of permanent improvements remain eligible in the guidelines.

Comment 17: A comment was received stating that there have been problems with the program locally. Fort Missoula received funding but returned the grant because the legislature altered the amount awarded and the project could not be completed. The commenter noted that there needs to be consistency from what is applied for, what is approved and evaluated by the Department of Commerce, and then what is approved by the legislature.

Response 17: The legislature may consider the agency recommendations, but ultimately the legislature may fund reduced award amounts regardless of the application or department recommendations.

Comment 18: A comment was received in favor of taking some of the MHPG money and making it available for \$7,000 to \$10,000 operational grants for museums.

Response 18: There are established specific criteria and requirements for the MHPG program, which are listed in 22-3-1306, MCA, and must be used as the basis for these guidelines. Operating expenses were not listed in the bill and would represent a departure from the legislature's guidance so are therefore not listed as an eligible expense.

Comment 19: A comment was received that federal agencies must partner with an eligible public entity or nonprofit organization willing to apply for and administer a grant on their behalf.

Response 19: The current guidelines allow non-profits to apply on behalf of historic sites.

/s/ John Semmens

John Semmens
Rule Reviewer

/s/ Mandy Rambo

Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State November 7, 2023.

BEFORE THE STATE PARKS AND RECREATION BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
RULES I and II pertaining to the)
Smith River bonus point permit)
system)

TO: All Concerned Persons

1. On September 8, 2023, the State Parks and Recreation Board (board) published MAR Notice No. 12-607 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 976 of the 2023 Montana Administrative Register, Issue Number 17.

2. The board has adopted the following rules as proposed: NEW RULES I (12.3.650) and II (12.3.651).

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

COMMENT 1: Several commenters supported or opposed House Bill (HB) 846 passed by the 2023 legislature.

RESPONSE 1: This comment does not require acceptance or rejection by the board regarding the substance of the rules as proposed. However, the board appreciates public interest in managing the Smith River. HB 846 established the Smith River bonus point system and the requirement that nonresidents may purchase no more than 10% of the available permits. The board's responsibility is to adopt rules to implement the new law as described in 23-2-408, MCA. Comments regarding the legislature's actions are outside the scope of the board's authority and this rulemaking process.

COMMENT 2: Several commenters expressed support for NEW RULE II, which establishes the procedures for administering the Smith River bonus points system for residents and nonresidents as enacted by the 2023 Montana State Legislature.

RESPONSE 2: The board appreciates the participation and support for the proposed procedures.

COMMENT 3: One commenter suggested that nonresidents pay a higher fee than residents when launching on the Smith River.

RESPONSE 3: This comment does not require acceptance or rejection by the board regarding the substance of the rules as proposed. The board notes that many of the fees were established by HB 846. Nonresidents pay a higher fee for a bonus point

than residents (\$50 versus \$5). Other fees for the Smith River are established in the board's Smith River State Park and River Corridor Biennial Rule. Under the current board rule, nonresidents already pay a higher state park user private float fee for the Smith River than residents (\$60 versus \$25). The permit application fees are the same for residents and nonresidents (\$15). Comments requesting changes to the existing fee structure are outside the scope of this rulemaking process and should be directed to the board's biennial rulemaking process for the Smith River.

COMMENT 4: One commenter expressed dissatisfaction that canceled Smith River float permits are available to the public. They suggested that residents who are unsuccessful in the permit drawing be given the option to be placed on a waitlist and notified when canceled permits become available.

RESPONSE 4: The board disagrees that a change is needed. The board will instruct the department to monitor the effectiveness of the new bonus points system and limit on permits available. The board or legislature can consider additional methods for increasing opportunities to obtain a permit if needed.

COMMENT 5: One commenter suggested that the board amend the rule prohibiting someone from applying for a permit during the peak season if they received a permit for a peak season float the previous year. They recommended that people obtaining a peak season permit should be prohibited from applying for a Smith River permit for one or two years.

RESPONSE 5: The board disagrees that the change is needed. The proposed rule already prohibits a second peak season float permit the following year. The board will instruct the department to monitor the effectiveness of the new bonus points system and may consider additional means for increasing opportunities to obtain a peak season permit in the future.

COMMENT 6: One commenter expressed concern that by modeling the Smith River bonus point system after the hunting bonus points system, permit applicants will unfairly manipulate the system. The commenter also advocated for the board to reduce the overall number of permits allocated through the lottery by 3 to 5% and to offer those permits to deserving organizations.

RESPONSE 6: The board disagrees that the changes are needed. The intent of NEW RULE II (12.3.651) is to mimic the hunting bonus points system as much as possible at the request of the legislators who sponsored HB 846. The bonus points system is familiar to people applying for special hunting licenses and permits. It is a mechanism designed to improve the chances of drawing a permit to float the Smith River. The board has instructed the department to monitor the effectiveness of the Smith River bonus points system. It may consider additional options for obtaining a permit if needed.

COMMENT 7: One commenter expressed concern that the Smith River bonus points system being modeled after the hunting bonus points system will result in

people accumulating bonus points but not drawing a permit, therefore not achieving the desired outcome.

RESPONSE 7: The board disagrees with this comment. The board and legislature have instructed the department to monitor the effectiveness of the Smith River bonus points system. They may consider additional options for affecting the odds of obtaining a permit at a later date. As presently set up, individuals successful in getting a permit would have their bonus points balance reduced to zero, and those who are unsuccessful may continue accumulating bonus points to increase their chances of drawing a permit in the future.

COMMENT 8: A commenter raised a concern about how active-duty military members are supposed to compete for a Smith River permit with only 10% of permits available if they live in Montana.

RESPONSE 8: This comment does not require acceptance or rejection by the board regarding the substance of the rules as proposed. An active-duty military member who is a resident of the state is considered a Montana resident under HB 846.

4. The board received comments supporting the rule proposed by HB 846's sponsors, Rep. Tom France and Rep. Gary Parry. The board also did not receive comments opposing adopting the rules as proposed by the legislative rule review committee.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Russ Kipp
Russ Kipp
Chair
State Parks and Recreation Board

/s/ Dustin Temple
Dustin Temple
Director
Fish, Wildlife and Parks

Certified to the Secretary of State on November 7, 2023.

BEFORE THE PUBLIC SAFETY OFFICERS
STANDARDS AND TRAINING COUNCIL
OF THE STATE OF MONTANA

In the matter of the transfer of ARM) NOTICE OF TRANSFER
23.13.201, 23.13.203, 23.13.214,)
23.13.215, 23.13.216, and 23.13.217)
pertaining to the certification of public)
safety officers)

TO: All Concerned Persons

1. The Public Safety Officers Standards and Training Council transfers the above-stated rules to ARM Title 23, chapter 13, subchapter 8.

2. This transfer is necessary because subchapter 2 of POST's administrative rules contains rules regarding certification. The rules being transferred are not certification rules, but rather rules regarding appointment and employment of officers or regarding training. This transfer provides greater clarity and better organization for POST's rules.

3. The transferred rules are assigned the following numbers under ARM Title 23, chapter 13, subchapter 8:

<u>OLD</u>	<u>NEW</u>	
23.13.201	23.13.801	MINIMUM STANDARDS FOR THE APPOINTMENT AND CONTINUED EMPLOYMENT OF PUBLIC SAFETY OFFICERS
23.13.203	23.13.803	CODE OF ETHICS
23.13.214	23.13.804	EMPLOYMENT AND TRAINING OF RESERVE OFFICERS
23.13.215	23.13.805	FIREARMS PROFICIENCY STANDARDS
23.13.216	23.13.806	PUBLIC SAFETY OFFICER EMPLOYMENT, EDUCATION, AND CERTIFICATION STANDARDS
23.13.217	23.13.807	REQUIREMENTS FOR SWAT PRIMARY COURSE CREDIT

/s/ DAVID ORTLEY
David Ortley
Deputy Attorney General
Rule Reviewer

/s/ JESSE SLAUGHTER
Jesse Slaughter
Chair
Montana POST Council

Certified to the Secretary of State November 7, 2023.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.159.670, 24.159.1468, and	)	REPEAL
24.159.1469 and the repeal of ARM)	
24.159.2101, 24.159.2102,)	
24.159.2104, and 24.159.2106)	
pertaining to continuing education)	

TO: All Concerned Persons

1. On June 23, 2023, the Board of Nursing (agency) published MAR Notice No. 24-159-93 regarding the public hearing on the proposed changes to the above-stated rules, at page 560 of the 2023 Montana Administrative Register, Issue No. 12.

2. On July 21, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

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

COMMENTS RELATING TO ARM 24.159.670:

COMMENT 1: One commenter opposed the rule change to allow for simulation-based learning, noting that dummies are not human beings, and stated that learning to communicate is part of good nursing care.

RESPONSE 1: The board recognizes that face to face clinical experiences remain crucial to the development of nursing students and concluded that simulation can augment their critical thinking skills.

COMMENT 2: Several commenters suggested the board utilize a longer monitoring period for simulation to ensure competency in graduates of nursing programs.

RESPONSE 2: The board monitors this closely.

COMMENT 3: One commenter supported the proposed simulation changes.

RESPONSE 3: The board appreciates all comments received during the rulemaking process.

COMMENT 4: One commenter believed the simulation changes will help advanced nursing practice.

RESPONSE 4: The board appreciates all comments received during the rulemaking process.

COMMENTS RELATING TO CONTINUING EDUCATION CHANGES:

COMMENT 5: One commenter supported the proposed changes but questioned the continuing education (CE) requirements for APRNs with prescriptive authority if the changes are adopted.

RESPONSE 5: The board is repealing the specific CE requirements for license renewal but that will not affect or change the CE required by accrediting bodies or employers.

COMMENT 6: One commenter asked whether RN licenses require CE on top of the requirements for an APRN, or if the APRN CE is sufficient to renew an RN license as well.

RESPONSE 6: The board is removing all CE requirements for renewal of LPN, RN, and APRN licensure.

COMMENT 7: Several commenters opposed the changes, stating that new drugs and changes to existing drugs require education to maintain a knowledge base.

RESPONSE 7: The board agrees that APRNs with prescriptive authority are expected to maintain a level of competence, including a knowledge base of the drugs they are prescribing. However, the board disagrees that this needs to be a separate requirement from licensees maintaining the minimum competency level expected of APRNs in Montana. Removal of CE requirements will allow all board licensees more flexibility in seeking educational opportunities.

COMMENT 8: Three commenters supported removing the pharmaceutical specific CE requirements, as pharmacology education credits are often embedded in other CE courses and stated that it was an administrative burden on APRNs to extract the specific number of pharmacology courses.

RESPONSE 8: The board agrees with the commenters.

COMMENT 9: Several commenters noted that APRNs are regularly researching and educating themselves on pharmaceuticals as part of their practice and supported the board removing the requirement.

RESPONSE 9: The board agrees with the commenters.

COMMENT 10: One commenter noted the importance of pharmacology specific education for nurse practitioners, believing it central to patient safety, and stated the board should not rely on the fact that there was no increase in bad outcomes while CE requirements were waived.

RESPONSE 10: The board believes licensees who engage in prescribing have an obligation to be competent, regardless of whether it maintains a CE reporting requirement, and concluded that if there was not an increase in bad outcomes for patients during a global pandemic, nurses did continue to practice at a high rate of competence.

COMMENT 11: One commenter suggested NPs should receive more yearly education.

RESPONSE 11: This comment is outside the scope of the proposed rulemaking.

COMMENT 12: Several commenters supported the repeal of the CE rules, as the board's stated rationale is sound, and the rules are superfluous at this point.

RESPONSE 12: The board appreciates all comments received during the rulemaking process.

COMMENT 13: One commenter did not support CE, since the commenter receives continuing medical education every day and through their employer.

RESPONSE 13: The board agrees CE should occur every day as a continuum and through the employer as recognized by the article attached to the comment.

COMMENT 14: Numerous commenters expressed appreciation that CE can be of a topic of interest to the individual.

RESPONSE 14: The board appreciates all comments received during the rulemaking process.

COMMENT 15: Numerous commenters supported the proposed changes, noting that nurses spend hours completing education as a requirement for their employing organizations.

RESPONSE 15: The board agrees with the commenter.

COMMENT 16: One commenter noted that proving CE hours to the board is an annoying and tedious task and interferes with license obtainability.

RESPONSE 16: The board appreciates all comments received during the rulemaking process.

COMMENT 17: One commenter supported the proposal, noting that CE often does not help nurses grow professionally because they are often unrelated to the nurse's current job or interest.

RESPONSE 17: The board appreciates all comments received during the rulemaking process.

COMMENT 18: One commenter believed CE is important but noted that CE credits are a poor measure of competence. The commenter stated that if the board is going to require CEs, they should specifically relate to a licensee's practice, which is not something the board currently tracks.

RESPONSE 18: The board agrees that CE credits do not always translate into competent nursing skills. The statute allowing the board to require CE also requires that it be easily obtainable, and requiring CE specific to a professional practice could limit the availability and ease of gaining CE. The department also does not track practice areas of licensees, and would have no way to measure whether a licensee's CE related to the licensee's practice.

COMMENT 19: One commenter supported the CE changes, noting that the commenter keeps current on areas required to render competent patient care, and has done so since before Montana required CE for nurses.

RESPONSE 19: The board agrees and notes professional accountability requires nurses to maintain competence, even without a specific CE requirement.

COMMENT 20: One commenter opined that the board is removing the CE requirement in an effort to suppress the voice of science.

RESPONSE 20: The board points out that CE has never required a scientific basis and that "science" is not a specific requirement in gaining CE approval from accrediting organizations. The board further notes that many accredited topics are not based in science, such as leadership-related CE.

COMMENT 21: Several commenters stated the proposal will delegitimize the nursing profession.

RESPONSE 21: The board disagrees. The board's removal of a specified CE renewal requirement does not remove the requirement for a licensee to maintain competence.

COMMENT 22: Several commenters opposed the changes, stating that the profession should maintain CE requirements to aid in motivation with learning.

RESPONSE 22: The board disagrees that CE needs to be a licensure requirement to motivate nurses to maintain a minimum level of competence and believes that removing the CE requirement allows for nurses to explore topics relevant to their practice. The board acknowledges there is a wide variation of CE available, and not all CE promotes competency. The board also notes that nurses obtain education and training as part of their employment that does not qualify for CE under current board rules, but that is still vital to ongoing competence of the nurse. In addition to

employer standards for competence, there are federal regulations requiring ongoing training and education for nurses.

COMMENT 23: Numerous commenters opined that removing CE requirements will lead to lowered professional standards in nursing and to patient harm.

RESPONSE 23: See RESPONSE 22.

COMMENT 24: One commenter supported the CE changes, stating that actual time in patient care is a more valuable use of a nurse's time, and that hours spent on the job contribute to nursing skills.

RESPONSE 24: The board agrees with the commenter.

COMMENT 25: One commenter noted that many conferences and educational opportunities rely on the host's ability to pay for having the event approved for CE, not the content of the event.

RESPONSE 25: The board appreciates all comments received during the rulemaking process. See also RESPONSE 22.

COMMENT 26: One commenter supported the CE changes, stating that the burden for maintaining best practice within a facility should be on the facility, not the nurse.

RESPONSE 26: The board agrees and notes that many facilities already have CE requirements for employees.

COMMENT 27: One commenter, who has practiced in states with and without CE requirements, stated that there is no difference in the quality of nurses between states. The commenter further noted that a state requirement is not necessary to require CE, as it's a duty as a professional and required for a board certification.

RESPONSE 27: The board agrees with the commenter.

COMMENT 28: One commenter believed CE requirements should be more detailed and expect learning throughout the year.

RESPONSE 28: This comment is outside the scope of the proposed rulemaking.

COMMENT 29: One commenter believed that a free access library should be created to motivate nurses to study and to upgrade their skills.

RESPONSE 29: The board appreciates all comments received during the rulemaking process, but this comment is outside the scope of this rulemaking.

COMMENT 30: Numerous commenters stated that 42 of 50 states require nurses to complete CE.

RESPONSE 30: The board found that some states require CE only for nurses who are not currently practicing and that nurses who are actively working are considered to have met the CE requirements in those states.

COMMENT 31: Numerous commenters opposed the CE changes, noting that the American Nurses Association's code of ethics indicates it is a nurse's professional responsibility to maintain competence practice.

RESPONSE 31: The board agrees nurses have a professional responsibility to maintain competence practice but disagrees that a board requirement to complete CE is necessary to achieve that end. See RESPONSE 22.

COMMENT 32: Numerous commenters stated that removing the CE requirement and associated random audit is averse to the board's mission to protect the public.

RESPONSE 32: The board disagrees, noting that nurses have an ongoing competency obligation whether the board requires CE or not. CE reporting is not necessarily related to each licensee's practice, and not all education received by licensees counts under the board's current requirements.

COMMENT 33: One commenter stated that CE is necessary to maintain equal footing with other medical professionals.

RESPONSE 33: The board notes that the Board of Medical Examiners does not require CE for physicians or physician assistants.

COMMENT 34: Numerous commenters disagreed with the idea that CE presents a burden on nurses.

RESPONSE 34: The board believes the burden is on finding specific CE that meets the board's requirements and reporting it to the board.

COMMENT 35: Numerous commenters opposed the proposed CE changes believing CE is an important part of nursing.

RESPONSE 35: See RESPONSE 22.

COMMENT 36: Multiple commenters stated that CE is important to maintain a high level of competence in a rapidly changing field, citing human immunodeficiency virus, acquired immunodeficiency syndrome, and hepatitis C as examples of diseases where treatment has changed rapidly over a short period of time.

RESPONSE 36: The board notes these rapidly changing fields are often addressed in the practice location and that accredited CE as required by the board is often general in nature and not specific to a particular specialty.

COMMENT 37: One commenter believed CE renews interest in the profession and prevents burnout.

RESPONSE 37: The board acknowledges that this may be the case for this commenter, but another nurse who is already burned out may suffer additional stress as a result of having to obtain the 24 CE required. Eliminating the CE requirement will not preclude licensees from obtaining CE.

COMMENT 38: One commenter stated the board should keep CE requirements so CE courses must be certified and based in true science driven evidence-based care.

RESPONSE 38: The board notes that accredited CE is not required to be based in science. See RESPONSE 20.

COMMENT 39: One commenter noted that facilities may stop offering CE if it is not a requirement of licensure.

RESPONSE 39: The board is not removing requirements for maintaining competence and has no jurisdiction over facilities. The board maintains that repealing the CE renewal requirement may lift administrative burdens for employers to offer professional development activities. See also RESPONSE 22.

COMMENT 40: Several commenters believed that without the requirement, nurses will not have an incentive to seek out CE opportunities.

RESPONSE 40: See RESPONSE 22.

COMMENT 41: Multiple commenters suggested the board's task force resume work on evaluating nursing CE.

RESPONSE 41: The board considered the work of the task force in proposing to repeal CE requirements and does not believe it is necessary to further evaluate CE.

COMMENT 42: Multiple commenters supported the rule changes to allow a variety of options to demonstrate maintaining competence.

RESPONSE 42: The board agrees that removing the board requirements will allow for nurses to choose education and training that advances the individual nurse's profession.

COMMENT 43: One commenter stated the board enacted CE requirements because licensees were failing to stay current in education.

RESPONSE 43: The board originally enacted CE as a result of other states requiring CE, and the board's published reason for enacting the rules does not speak to licensees not staying current. In 2010, when the board adopted the

requirement, licensees did not have access to the same information and the practice of nursing was not nearly as connected to real-time information as it is today.

COMMENT 44: One commenter stated that research data has consistently shown that it can take up to 10 years to implement practice changes because individuals do not stay current.

RESPONSE 44: See RESPONSE 43.

COMMENT 45: One commenter provided the article "Lifelong learning and nurses' continuing professional development, a metasynthesis of the literature" to the board to support the commenter's opposition.

RESPONSE 45: The board believes this article supports their reasoning in repealing CE requirements as it refers to organizational and incremental learning, which the board believes is best achieved in the facility and in collaboration with other professionals.

COMMENT 46: Several commenters believed the board should maintain CE requirements, noting that the legislature may dig into APRN practice authority if the board does not advocate for the profession and keep it solid and evidence-based.

RESPONSE 46: The board notes that the scope of practice of APRNs is the purview of the legislature and does not believe that it should or could prevent the legislature from examining whether statutes setting scopes of practice should be amended. The board notes that physicians do not have CE requirements.

COMMENT 47: One commenter noted that the mobile population of nurses moving in and out of Montana could be harmed by the lack of CE requirements.

RESPONSE 47: Nurses who practice in Montana on a compact license are required to comply with their home state license requirements. Licensees are required to know, understand, and comply with the practice laws of the jurisdictions in which they practice. There are other compact states that do not require CE as part of maintaining a nursing license, and the board does not foresee difficulty for licensees in understanding requirements.

COMMENT 48: One commenter noted that a lack of CE accredited by the board may decrease the credibility of CE offered in Montana.

RESPONSE 48: See previous responses that indicate plenty of opportunities for CE beyond the board's requirements.

COMMENT 49: Many commenters opposed the CE rule changes.

RESPONSE 49: The board appreciates all comments received during the rulemaking process.

COMMENT 50: Many commenters supported the proposed CE rule changes.

RESPONSE 50: The board appreciates all comments received during the rulemaking process.

COMMENT 51: Several commenters did not believe the board should rely on the lack of increase of complaints during the pandemic as a reliable data source for repealing the CE requirements.

RESPONSE 51: The board is not solely relying on the lack of increase of complaints during the CE waiver period. The board believes that no increase in complaints during a horrifically stressful period in nursing speaks to licensees' abilities to remain competent without the board requiring CE.

COMMENT 52: Several commenters suggested this proposal is an attempt by the current administration to silence the voices of nurses.

RESPONSE 52: While the current administration has highlighted the need to remove unnecessary and overly burdensome regulations, it has not directed these rule changes, which come at the board's request after reviewing the task force's work and in conjunction with the CE reporting waiver over the past two years.

COMMENT 53: Several commenters disagreed with the board's determination that the repeal of CE will not significantly and directly impact Montana's small businesses, especially regarding patient outcomes and sentinel events as well as the professional development organization of the Montana Nurses Association.

RESPONSE 53: In voting to propose the rule changes, the board considered whether the proposal would significantly and directly impact Montana small businesses. The board considered whether the proposal would impose a new or extended regulatory burden on Montana small businesses and determined that no new regulatory burden would be imposed. The proposed rules do not have an effect on the ability of any Montana small business to offer CE opportunities.

COMMENT 54: One commenter urged the board not to defund educational opportunities for nurses.

RESPONSE 54: The board does not fund CE courses.

COMMENT 55: Multiple commenters asked what effect this proposal would have on the board's compact status.

RESPONSE 55: The rule changes will not affect the board's compact status. There are other compact states that do not require CE as a condition for licensure.

GENERAL COMMENTS:

COMMENT 56: One commenter believed prescriptive authority should be more regulated, not less.

RESPONSE 56: This comment is outside the scope of the proposed rulemaking.

COMMENT 57: One commenter noted the commenter did not receive notice of the board's rulemaking proposal.

RESPONSE 57: In addition to the MAPA required publishing and notification, the board emailed every board licensee to notify them of this proposal and to encourage public participation. The board's records indicate that the notice of board action did go to the commenter's email address on file with the board, and suggests all licensees ensure they are receiving communications from the board by checking spam filters and maintaining up to date contact information with the board.

COMMENT 58: One commenter suggested that international nurses with a specialty in midwifery be considered to work as obstetric nurses in rural and urban areas.

RESPONSE 58: The board notes this is outside the scope of this rulemaking.

COMMENT 59: One commenter suggested that nursing should be ranked like health care providers as "junior reg," "senior reg," and "consultant."

RESPONSE 59: The board notes this is outside the scope of this rulemaking.

4. The agency has amended ARM 24.159.670, 24.159.1468, and 24.159.1469 as proposed.

5. The agency has repealed ARM 24.159.2101, 24.159.2102, 24.159.2104, and 24.159.2106 as proposed.

BOARD OF NURSING
SARAH SPANGLER, RN, PRESIDENT

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

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 7, 2023.

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

In the matter of the amendment of) NOTICE OF AMENDMENT,
ARM 24.168.301, 24.168.402,) ADOPTION, AND REPEAL
24.168.2101, 24.168.2104, and)
24.168.2301, the adoption of NEW)
RULE I, and the repeal of ARM)
24.168.406, 24.168.411, and)
24.168.2307 pertaining to the Board of)
Optometry)

TO: All Concerned Persons

1. On September 8, 2023, the Board of Optometry (agency) published MAR Notice No. 24-168-45, regarding the public hearing on the proposed changes to the above-stated rules, at page 994 of the 2023 Montana Administrative Register, Issue No. 17.

2. On October 3, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. No comments were received by the deadline.

3. The agency has amended ARM 24.168.301, 24.168.402, 24.168.2101, 24.168.2104, and 24.168.2301 as proposed.

4. The agency has adopted New Rule I (24.168.2303) as proposed.

5. The agency has repealed ARM 24.168.406, 24.168.411, and 24.168.2307 as proposed.

BOARD OF OPTOMETRY
DOUGLAS KIMBALL, O.D.
PRESIDENT

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 7, 2023.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.104.3001, 37.104.3012,)
37.104.3020, and 37.104.3022)
pertaining to trauma facility)
designation)

TO: All Concerned Persons

1. On September 8, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1026 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1001 of the 2023 Montana Administrative Register, Issue Number 17.

2. The department has amended the following rules as proposed: ARM 37.104.3001, 37.104.3012, 37.104.3020, and 37.104.3022.

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: A commenter expressed support for the proposed rule amendments and indicated they look forward to adoption of the rules as proposed with an effective date of January 1, 2024.

RESPONSE #1: The department thanks the commenter for their support of the proposed rule amendments.

COMMENT #2: Two commenters suggested revising ARM 37.104.3020(1) to require that the general surgeon participating on the site review team be a general surgeon with at least five years post-graduate experience as a trauma surgeon. The commenters indicated the department's proposed rule language could lead to general surgeons with minimal or no post-graduate experience in trauma care being appointed to a site review team and expressed concern this would result in inadequate evaluation and oversight of trauma care facilities.

RESPONSE #2: The department respectfully disagrees that the rule change suggested by the commenters is necessary. The department believes its proposed rule amendments will ensure adequate evaluation and oversight of trauma facilities. Under ARM 37.104.3001(19), members of a site review team are selected by the department based on expertise in trauma care and trauma program administration. Pursuant to this selection criteria, each member of the site review team must undergo training on the trauma center designation statutes and rules and the process for conducting a site visit prior to performing site reviews. Additionally, the

department strives to select members for a site review team who are intimately involved in the trauma care system, have personal experience with designations/verifications at their facility, and who are currently or have previously been a facility trauma medical director. New site team review members are also paired with an experienced reviewer to ensure consistency among reviewers.

COMMENT #3: Two commenters suggested revising ARM 37.104.3020(2) to require that the physician on a site review team be a general surgeon currently providing trauma care. The commenters indicated the department's proposed rule language could lead to physicians with no experience in trauma care being appointed to a site review team, which would result in inadequate evaluation and oversight of trauma care facilities.

RESPONSE #3: The department respectfully disagrees that the rule change suggested by the commenters is necessary. The department believes the rule language it has proposed will ensure adequate evaluation and oversight of trauma facilities. Please see the response to comment #2. Additionally, under ARM 37.104.3001(19), the department has discretion in the selection of site team review members; and as part of selecting physicians to serve as site review members, the department considers the level of experience in trauma care that potential members have.

4. The rule amendments are effective January 1, 2024.

/s/ Robert Lishman

Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton

Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State November 7, 2023.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.34.907 pertaining to)
Medicaid Home and Community-)
Based Services Program)

TO: All Concerned Persons

1. On July 7, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1035 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 643 of the 2023 Montana Administrative Register, Issue Number 13.

2. The department has amended ARM 37.34.907 as proposed.

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: The department received a comment expressing concern that the 4% rate increase to Applied Behavior Analysis (ABA) services does not address inflation nor meets legislature intent. Additionally, the commenter recommends using Guidehouse's cost analysis to inform an adequate rate for these services.

Response #1: The department appreciates the feedback; however, this is outside the scope of this rulemaking. Similar comments were submitted for MAR Notice No. 37-1037, and the commenter is encouraged to view the department's response in that notice.

Comment #2: The department received a comment requesting geographic rate differential for human services staff and Applied Behavior Analysis (ABA) services to address increases in the cost-of-living.

Response #2: The department appreciates the feedback; however, this is outside the scope of this rulemaking.

/s/ Rachel Raymond
Rachel Raymond
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State November 7, 2023.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 38.3.201, 38.3.702, 38.3.705,	)	REPEAL
38.3.706, 38.3.707, 38.3.805,)	
38.3.2001, and 38.3.2101 and the)	
repeal of ARM 38.3.1303 pertaining)	
to deregulation of Class C motor)	
carriers in Montana's Motor Carrier)	
Act)	

TO: All Concerned Persons

1. On September 22, 2023, the Department of Public Service Regulation published MAR Notice No. 38-3-250 pertaining to the proposed amendment and repeal of the above-stated rules at page 1076 of the 2023 Montana Administrative Register, Issue Number 18.

2. The department has amended and repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ LAURA D. VACHOWSKI
Laura D. Vachowski
Rule Reviewer

/s/ JAMES BROWN
James Brown
President
Public Service Commission

Certified to the Secretary of State November 7, 2023.

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

In the matter of the repeal of ARM	)	NOTICE OF REPEAL
38.5.601, 38.5.602, 38.5.603,)	
38.5.604, 38.5.605, 38.5.606,)	
38.5.607, 38.5.608, 38.5.609,)	
38.5.610, and 38.5.611 pertaining to)	
optional filing standards for electric,)	
gas, water, and sewer utilities)	

TO: All Concerned Persons

1. On October 6, 2023, the Department of Public Service Regulation published MAR Notice No. 38-5-261 pertaining to the proposed repeal of the above-stated rules at page 1183 of the 2023 Montana Administrative Register, Issue Number 19.
2. The department has repealed the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ LAURA D. VACHOWSKI
Laura D. Vachowski
Rule Reviewer

/s/ JAMES BROWN
James Brown
President
Public Service Commission

Certified to the Secretary of State November 7, 2023.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I pertaining to third-party)
testing of voting systems)

TO: All Concerned Persons

1. On September 22, 2023, the Secretary of State (SOS) published MAR Notice No. 44-2-265 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1082 of the 2023 Montana Administrative Register, Issue Number 18.

2. On October 16, 2023, a public hearing was held on the proposed adoption of the above-stated rule.

3. The Secretary of State has adopted NEW RULE I as proposed, with the following changes from the original proposal, new matter underlined:

NEW RULE I (44.3.1721) VOTING SYSTEM TESTING (1) through (4) remain as proposed.

(5) The county election administrator or designee must be present and ensure the chain of custody of the voting system is documented throughout the testing process.

(6) and (7) remain as proposed.

AUTH: 13-17-103, MCA

IMP: 13-17-103, MCA

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

COMMENT #1: A commenter recommended in NEW RULE I(5) providing a county election administrator the ability to designate someone to represent them during the testing.

RESPONSE #1: The Secretary of State appreciates the recommendation and has incorporated in (5) the ability for a county election administrator to designate a person to represent them.

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 7th day of November, 2023.

VOLUME NO. 59

OPINION NO. 1

MUNICIPALITIES: Municipalities retain the right to require permits from a Water District which contracts with the city for water for excavation of city water lines in city streets and rights-of-way;

WATER DISTRICTS: A water district which contracts to receive its water from a municipality must obtain a permit from the city to excavate waterlines within the city;

MONTANA CODE ANNOTATED: §§ 7-1-112 (3), 7-13-2201, 7-13-2218, 7-13-2219, 7-13-2220, 7-13-4104, 7-14-116, 7-14-4121.

HELD: The Water District must apply and pay for permits from the city prior to excavating in the right-of-way on property owned by and under city management.

November 17, 2023

Gina Dahl, Esq.
Billings City Attorney
P.O. Box 1178
Billings, MT 59103

Ms. Dahl:

You have requested an Attorney General Opinion on a question I have restated as follows:

Whether § 7-13-2220 MCA, and § 7-1-112(3) MCA, prohibit the City of Billings (City) from requiring a county water district to obtain a permit from the City to excavate in City streets and other public rights-of-way pursuant to City ordinances and state law?

In preparing this Opinion, I have considered the analysis in your legal memorandum accompanying your request for an Attorney General Opinion and comments received in this office.

According to the City, the County Water District of Billings Heights (District) was created in 1958 under MCA § 7-13-2201 as a separate unit of local government distinct from the City. The District contracts with the City to receive municipal water service from the City's municipal water system.

The City claims that the District traditionally obtained permits required by the city code to excavate in city streets and other rights-of-ways to access the water lines. The District recently decided that it will no longer apply for, or pay for, permits. The District cites MCA § 7-13-2220 and § 7-1-112(3) as authority exempting it from those permits.

I. The Law on Right-of-Ways, City Streets, and Utilities

Existing statutes define the *general powers* of a water district (MCA § 7-13-2217), and further define the *specific powers* related to construction of water projects (MCA § 7-13-2218).

The district board of directors may construct water works across natural and manmade obstacles. MCA § 7-13-2219.

The board of directors shall have power to construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of said works may intersect or cross; provided such works are constructed in such manner as to afford security for life and property; and said board shall restore the crossings and intersections to their former state as near as may be or in a manner not to have impaired unnecessarily their usefulness.

The legislature limited this authority by requiring the district "afford security for life and property" during construction. *Id.* And the district must "restore the crossing and intersections to their former state." *Id.*

The permitting process allows the City of Billings to ensure that life and property are not jeopardized during excavation, and that the road surface is restored to its former condition.

The legislature granted water districts a right-of-way across state owned lands for the construction and maintenance of district water works. MCA § 7-13-2220.

The right-of-way is given, dedicated, and set apart to locate, construct, and maintain district works over and through any lands which are the property of this state, and the district has the same rights and privileges relating to the right-of-way as are granted to municipalities.

The statutory language limits the rights and privileges to those granted to municipalities in MCA § 7-13-4101. That section in turn provides:

(1) The city or town council has power to permit the use of the streets and alleys, other property, rights-of-way, utility corridors, or easements of the city or town for the purpose of laying down gas, water, and other mains and broadband infrastructure, *but excavations may not be made for this purpose without the permission of the council or its authorized officer.* (emphasis added)

The difference in the rights and privileges granted to municipalities is highlighted by MCA § 7-14-4121, which specifically grants to municipalities the power to regulate public grounds:

Maintenance and regulation of public grounds. The city or town council has power to provide for enclosing, improving, and regulating all public grounds belonging to the city or town.

Taken together, these statutes grant a county water district the power to construct and maintain water works across natural and manmade obstacles. The water district also possesses a right-of-way across state lands for this same purpose.

However, the power to regulate public grounds rests with the owner, and excavation may be made without the permission of an authorizing officer.

The statutes leave some ambiguity to the meaning of the "same rights and privileges" in MCA § 7-13-2220. One interpretation is that the phrase confers a like

power to the water district board to authorize excavations just as the city council possesses in MCA § 7-13-4101. The other interpretation is that because both the municipality and water district possess a right-of-way over the same crossing, the municipality possesses a greater specific authority to permit excavations of that crossing. The second interpretation must be correct under current law.

The power of the City to impose upon the water district the duty to obtain a permit for excavation of a city street is granted in MCA § 7-1-112 (3) which provides in part:

A local government with self-government powers is prohibited the exercise of the following powers *unless the power is specifically delegated by law*:

(3) the power to impose a duty on another unit of local government, except that nothing in this limitation affects the right of a self-government unit to enter into and enforce an agreement on interlocal cooperation; (emphasis added)

The legislature vested the City with the power to regulate public grounds, and to require permission from its council, or authorized officer, prior to excavation of its streets for any of the utilities identified in MCA § 7-13-4101. Notwithstanding the conditional grant of power and right-of-way to the water district, the City may lawfully impose the duty on the water district to obtain a permit prior to excavation.

Other statutes support the conclusion that cities retain authority over access to and construction in the right-of-way. For example, MCA § 7-14-4102 provides:

The city or town council may:

(1) except as provided in 7-14-4116, regulate and prevent the use or obstruction of streets, sidewalks, and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction;

Similarly, MCA § 7-14-4104 supports this conclusion that the city has broad power to ensure the integrity and safety of its streets:

Except as provided in 7-14-4116, the city or town council may prevent the encumbering of streets, sidewalks, alleys, or public grounds with obstacles or materials.

This additional statutory evidence reflects the category of powers specifically delegated by law to cities in MCA § 7-1-112.

While there are no cases interpreting the statutes discussed above in the context of your question, cases discussing the liability of municipalities for defects in city owned property emphasize the role the police power to regulate has in imposing liability on municipalities for known defects caused by others.

In *Lazich v. Butte*, 116 Mont. 386, 154 P.2d 260 (1944), a case involving a damaged wooden sidewalk, the Montana Supreme Court found that the building permit process did not create an agency relationship between the city and the permit holder. Rather, the issuance of the permit provided constructive notice to the city of the construction. In recognition of the broad, nondelegable, power to police and administer city property, the court stated:

City ordinances enacted by municipal organizations requiring that a permit shall be obtained from the municipality before any building shall be erected or repaired, or any other work of a similar nature or kind is

begun, within the corporate limits of the municipality, are regulations established pursuant to and in the exercise of the police powers vested in municipalities. . . . Section 5039.37 empowers city and town councils to prevent encumbering sidewalks with obstacles and material and such legislative grant carries the implied power to compel observance of such regulation. This means that the enforcement of this regulation must be made effective by the officers or employees of the municipality.

Lazich, 116 Mont. at 389, 154 P.2d at 261.

The rationale underlying the exercise of the police power to regulate construction, the requirement of building permits, and the city's liability for defects in city property it has knowledge of, applies equally to excavation of city streets by third parties.

II. Policy Considerations

Cities have the power and responsibility to regulate what goes on the streets within their jurisdiction which is entrusted to them by the State of Montana. While the District has the power to construct and maintain critical infrastructure on state land, that legal right does not change the activities on streets by the people of Montana. The people must still be able to go to work, places of worship, engage in commerce, go to school, and carry out their everyday lives. As the local level of governance, cities are in the best position to manage (and are the most answerable to) the competing interests that occur within their communities. They are simply the best choice to manage the day-to-day activities of the city and know how to use the streets in the most efficient way.

To facilitate this activity of the people, the State of Montana has vested authority in municipalities to regulate and police the activities occurring on these streets so they can be utilized in the most efficient and safest way possible. With the power to regulate the activity occurring on streets also comes the liability. Cities have a non-delegable public duty to keep city streets in a reasonably safe condition for public travel. A city cannot delegate its liability to the water district for potential mistakes that may occur. Since the City retains responsibility for maintaining the streets within its municipality, logic would suggest that the City must have the power to issue or deny permits for all road work done on the streets it is responsible for managing.

Both the legal and policy implications overwhelmingly support the conclusion that the City has the authority to require the District to apply for permits to excavate on streets managed by the City. The permit requirement is a simple recognition of the nature of the City's general police power and the corresponding power to regulate by requiring permits. Statutory and case law provide the City is responsible for, and therefore is the arbiter of, what occurs on streets entrusted to it by the State of Montana. Policy considerations suggest a contrary opinion would lead to adverse situations where excavation could occur without notice to the City and its inhabitants. Absent the advance notice afforded by the permit process the City would not be able to manage its exposure to liability, and restoration of the roadway affected by excavation.

THEREFORE, IT IS MY OPINION:

The District must apply for and pay for permits from the City to excavate city streets. MCA § 7-13-2220 can be reasonably read to not conflict with MCA § 7-13-4101. The requirement to obtain a permit to excavate water lines on city property does not infringe upon the Water District's right to lay and maintain their water lines.

Sincerely,

/s/ Austin Knudsen
AUSTIN KNUDSEN
Attorney General

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

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 (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- 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
- 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 an online 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 recent rulemaking 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.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2023. This table includes notices in which those rules adopted during the period May 26, 2023, through November 3, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 Montana Administrative Register.

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

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2-59-640	Renewal Fees of Mortgage Brokers, Mortgage Lenders, Mortgage Servicers, and Mortgage Loan Originators, p. 602, 870

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- 6-280 Continuing Education Program for Insurance Producers and Consultants, p. 778, 1397
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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in October 2023 appear. Potential vacancies from December 1, 2023 through December 31, 2023, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 1, 2023.

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

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council			
Mr. Brent Colbert Helena	Governor	Pat Roos	10/24/2023 9/1/2027
Qualifications (if required):	Montana Sheriffs and Peace Officers Assn Representative		
Chief Doug Colombik Miles City	Governor	Reappointed	10/24/2023 9/1/2027
Qualifications (if required):	Montana Association of Chiefs of Police Representative		
Mr. Rand Dickson Deer Lodge	Governor	Jeremy Virts	10/24/2023 9/1/2027
Qualifications (if required):	Montana Emergency Medical Services Association		
Chief Mike Doto Butte	Governor	Reappointed	10/24/2023 9/1/2027
Qualifications (if required):	Montana State Volunteer Firefighter's Association Representative		
Mr. Burke Honzel Fort Harrison	Governor	Reappointed	10/24/2023 9/1/2027
Qualifications (if required):	Department of Military Affairs Representative		
Mr. Kevin Krausz Miles City	Governor	Gary Macdonald	10/24/2023 9/1/2027
Qualifications (if required):	MACO Representative		

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
ABLE Program Oversight Committee			
Ms. Theresa Baldry	Governor	Jon Bennion	10/24/2023
Miles City			9/1/2026
Qualifications (if required): Experience working on behalf of disabled individuals			
Ms. Kathleen Magone	Governor	Kat Patterson	10/24/2023
Missoula			9/1/2026
Qualifications (if required): Knowledge, skill, and experience in accounting, risk management, investment management, or as actuary			
Board of Aeronautics			
Mr. Grayson Sperry	Governor	Timothy Sheehy	10/2/2023
Belgrade			1/5/2025
Qualifications (if required): Chamber of Commerce Member			
Board of Hail Insurance			
Mr. Vincent Mattson	Governor	Reappointed	10/2/2023
Chester			5/1/2026
Qualifications (if required): Public Member			
Board of Regents of Higher Education			
Mr. Garret Yeager	Governor	Norris Blossom	10/23/2023
Choteau			7/1/2024
Qualifications (if required): Student Regent			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Commission on Community Service			
Mr. Clifford Kipp Kalispell	Governor	Pamela Carbonari	10/24/2023 7/1/2026
Qualifications (if required): Nonprofit that works with senior citizens representative			
Mr. Robert Lawler Helena	Governor	New	10/24/2023 7/1/2026
Qualifications (if required): DPHHS Representative			
Ms. Victoria Turner Helena	Governor	Karen Moses	10/24/2023 7/1/2026
Qualifications (if required): Public Member			
Information Technology Board			
Ms. Carrie Albro Helena	Governor	Charles Brereton	10/2/2023 5/1/2026
Qualifications (if required): DPHHS Representative			
Mr. John Daugherty Helena	Governor	Brian Gootkin	10/2/2023 1/1/2025
Qualifications (if required): Corrections Director or designee			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Information Technology Board Cont.			
Mr. James Fehr	Governor	Chris Dorrington	10/2/2023
Helena			1/1/2025
Qualifications (if required): DEQ Director or designee			
Interstate Commission on Educational Opportunity for Military Children			
Lt. Col. John Bleile	Governor	Reappointed	10/2/2023
Fort Harrison			7/1/2025
Qualifications (if required): Executive branch representative			
Mr. Tom Moore	Governor	Reappointed	10/2/2023
Great Falls			7/1/2025
Qualifications (if required): Superintendent of a school district with high concentration of military children			
Ms. Lisa Sapp	Governor	Reappointed	10/2/2023
Great Falls			7/1/2025
Qualifications (if required): Military installation Representative			
Mr. Ray Shaw	Governor	Reappointed	10/2/2023
Sheridan			7/1/2025
Qualifications (if required): Compact Commissioner			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Mental Disabilities Board of Visitors			
Ms. Melissa Ancell Poplar	Governor	Reappointed	10/2/2023 7/1/2025
Qualifications (if required): Consumer of developmental disability services			
Mr. Scott Klajic Helena	Governor	Reappointed	10/2/2023 7/1/2025
Qualifications (if required): Mental health treatment professional			
Ms. Mary Luinstra Great Falls	Governor	Reappointed	10/2/2023 7/1/2025
Qualifications (if required): Consumer of mental health services			
Montana 250th Commission			
Mr. Christopher Averill East Helena	Governor	New	10/2/2023 12/31/2026
Qualifications (if required): Public member			
Ms. Jane Hamman Clancy	Governor	New	10/2/2023 12/31/2026
Qualifications (if required): Public Member			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana 250th Commission Cont.			
Ms. Deena Mansour Missoula Qualifications (if required): Public Member	Governor	New	10/2/2023 12/31/2026
Ms. Mary Stockdale Lolo Qualifications (if required): Public Member	Governor	New	10/2/2023 12/31/2026
Private Land Public Wildlife Advisory Council			
Mr. Edward Beall Helena Qualifications (if required): Sports person	Governor	Reappointed	10/24/2023 8/1/2027
Ms. Cynthia Cohan Butte Qualifications (if required): Sports person	Governor	Reappointed	10/24/2023 8/1/2027
Mr. Lee Cornwell Glasgow Qualifications (if required): Landowner	Governor	Reappointed	10/24/2023 8/1/2027

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Private Land Public Wildlife Advisory Council Cont.			
Mr. Paul Ellis Bozeman Qualifications (if required): Outfitter	Governor	Reappointed	10/24/2023 8/1/2027
Ms. Donna McDonald Alder Qualifications (if required): Landowner	Governor	Reappointed	10/24/2023 8/1/2027
Ms. Stephanie Prater Lewistown Qualifications (if required): Sports person	Governor	Tierani Brusett	10/24/2023 8/1/2027
State Emergency Response Commission (SERC)			
Mr. Peter Callahan Helena Qualifications (if required): DPHHS Representative	Governor	New	10/27/2023 10/1/2025
Mr. Doug Dodge Boulder Qualifications (if required): Person with hazardous material emergency planning experience	Governor	New	10/27/2023 10/1/2027

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Emergency Response Commission (SERC) Cont.			
Mr. Thomas Kuntz	Governor	Reappointed	10/27/2023
Red Lodge			10/1/2027
Qualifications (if required): Person with hazardous material emergency planning experience			
Ms. Angel Lei	Governor	Reappointed	10/27/2023
Lame Deer			10/1/2029
Qualifications (if required): Tribal Emergency Response Representative			
Mr. Brett Lloyd	Governor	Delila Bruno	10/27/2023
Ft. Harrison			10/1/2027
Qualifications (if required): Montana Disaster and Emergency Services Representative			
Ms. Susan McEachern	Governor	Reappointed	10/27/2023
Helena			10/1/2025
Qualifications (if required): DOT Rep			
Mr. John Rasmann	Governor	Reappointed	10/27/2023
Helena			10/1/2025
Qualifications (if required): DEQ Rep			
Mr. Colton Walter	Governor	New	10/27/2023
Great Falls			10/1/2027
Qualifications (if required): Person with hazardous material emergency planning experience			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Western Montana Conservation Commission (WMCC)			
Ms. Sandy Beder-Miller Troy	Governor	New	10/13/2023 7/1/2025
Qualifications (if required): Private Industry Representative			
Mr. Duane Braaten Kalispell	Governor	New	10/13/2023 7/1/2024
Qualifications (if required): Electric Coop Representative			
Mr. Mike Koopal Whitefish	Governor	New	10/13/2023 7/1/2027
Qualifications (if required): Public Member			
Mr. Phillip Matson Columbia Falls	Governor	New	10/13/2023 7/1/2025
Qualifications (if required): Public Member			
Mr. Lech Naumovich Whitefish	Governor	New	10/13/2023 7/1/2024
Qualifications (if required): Public Member			
Mr. Matthew Peterson Missoula	Governor	New	10/13/2023 7/1/2027
Qualifications (if required): Irrigation District Representative			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Western Montana Conservation Commission (WMCC) Cont.			
Mr. Arthur Potts	Governor	New	10/13/2023
Noxon			7/1/2025
Qualifications (if required): Hydropower Utility Industry Representative			
Mr. Onno Wieringa	Governor	New	10/13/2023
Hungry Horse			7/1/2025
Qualifications (if required): Public Member			

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2023 THROUGH DECEMBER 31, 2023

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Occupational Therapy		
Dr. Trent Gahl, Belgrade	Governor	12/31/2023
Qualifications (if required): Occupational therapist actively engaged in the practice or teaching		
Board of Speech-Language Pathologists and Audiologists		
Dr. Kelsey Mann, Billings	Governor	12/31/2023
Qualifications (if required): Audiologist		
Dr. Hillary Carter, Helena	Governor	12/31/2023
Qualifications (if required): Audiologist		
Flathead Reservation Water Management Board		
Mr. Kenneth Pitt, Polson	Governor	12/31/2023
Qualifications (if required): Reservation resident experienced in water law		
Grass Conservation Commission		
Jess Drange, Ismay	Governor	12/31/2023
Qualifications (if required): None stated		
Mr. Nathan Descheemaeker, Winnett	Governor	12/31/2023
Qualifications (if required): None stated		
Montana Alfalfa Seed Committee		
Mr. Ernest Johnson, Chinook	Governor	12/1/2023
Qualifications (if required): Actively engaged in the growing of alfalfa seed within the state		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2023 THROUGH DECEMBER 31, 2023

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Alfalfa Seed Committee Cont.		
Mr. John Mehling, Hardin	Governor	12/1/2023
Qualifications (if required): Alfalfa seed grower and rears alfalfa leaf cutting bees		
Mr. Cavin Steiger, Forsyth	Governor	12/1/2023
Qualifications (if required): Actively engaged in the growing of alfalfa seed within the state		
Statewide Independent Living Council		
Ms. Deserie Kelley, Missoula	Governor	12/1/2023
Qualifications (if required): person w disability and independent living center representative		
Traumatic Brain Injury Advisory Council		
Mrs. Teresa McKeon, Malta	Governor	12/31/2023
Qualifications (if required): None stated		
Ms. Carla Hunsley, Fort Peck	Governor	12/31/2023
Qualifications (if required): None stated		

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