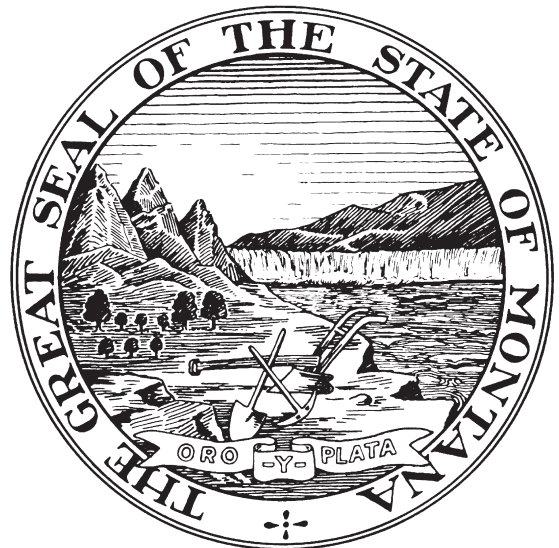


MONTANA ADMINISTRATIVE REGISTER

2024 ISSUE NO. 3
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PAGES 155-303



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 6.6.8801, 6.6.8805, 6.6.8806,)	AMENDMENT AND REPEAL
6.6.8807, 6.6.8808, 6.6.8820, and)	
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Network Adequacy for Managed Care)	

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to amend and repeal the above-stated rules.

2. The 68th Montana Legislature passed House Bill 156, which transferred the authority and operation of the Managed Care Plan Network Adequacy and Quality Assurance Act from the Department of Public Health and Human Services (DPHHS) to CSI. The first step in implementing the relevant sections of HB 156 occurred on October 20, 2023, when the commissioner published MAR Notice No. 6-282, which transferred rules pertaining to Network Adequacy for Managed Care Plans from DPHHS to CSI. The second step in implementing the relevant sections of HB 156 is amending the rules to conform to the changes made by HB 156 and to CSI operations, which is accomplished by the amendments proposed in this notice.

3. CSI 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 accommodation, contact CSI no later than 5:00 p.m. on February 20, 2024, to advise us of the nature of the accommodation that you need. Please contact Laura Shirliff, Digital and Creative Services Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-3326148; fax (406) 444-3413; TDD (406) 444-3246; or e-mail csi@mt.gov.

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

6.6.8801 DEFINITIONS The following definitions, in addition to those contained in 33-36-103, MCA, apply to this chapter:

(1) "Access plan" means a document filed by a health carrier with the ~~department~~ commissioner that complies with the standards set forth in ~~ARM 37.108.205 through 37.108.207~~ 6.6.8805 through 6.6.8807 and 33-36-201, MCA.

(2) "Advanced practice registered nurse" means a nurse midwife, a nurse anesthetist, a nurse practitioner, or a clinical nurse specialist.

(3) "Geographic service area" means a geographic area of Montana in which a health carrier has a network that has been deemed adequate by the ~~department~~ commissioner.

(4) "Mid-level provider" means a physician assistant-certified or an advanced practice registered nurse.

(5) "Non-urgent care with symptoms" means care required for an illness, injury, or condition with symptoms that do not require care within 24 hours to prevent a serious risk of harm but do require care that is neither routine nor preventive in nature.

(6) "Primary care provider (PCP)" means a physician, mid-level provider, federally qualified health center or rural health clinic as defined in ARM ~~46.12.1708~~ 37.86.4401, migrant health center, or other community-based provider that is designated by a health carrier to supervise, coordinate, or provide initial or continuing care to an enrollee, and if required by the health carrier, initiate a referral for specialty care services rendered to the enrollee.

(7) "Specialty provider" or "specialist" means a physician or other provider whose area of specialization is an area other than general medicine, family medicine, general internal medicine, or general pediatrics. A provider whose area of specialization is obstetrics and/or gynecology may be either a PCP or a specialist within the meaning of this rule.

(8) "Urgent care" means those health care services that are not emergency services but that are necessary to treat a condition or illness that could reasonably be expected to present a serious risk of harm if not treated within 24 hours.

AUTH: 33-36-105, MCA

IMP: 33-36-103, 33-36-105, MCA

6.6.8805 ACCESS PLAN FILING AND REVIEW GUIDELINES (1) When a health carrier submits a proposed access plan to the ~~department~~ commissioner for review and approval, the ~~department~~ commissioner will either approve, disapprove, or request additional information on the proposed plan within 60 calendar days. The ~~department~~ commissioner has a total of 60 calendar days to review and issue a decision concerning any proposed access plan, not including any 30-calendar day response period that may be granted a health carrier proposing the plan. The ~~department~~ commissioner may grant up to two 30-day response periods during the review of each access plan.

(2) During the ~~departmental~~ commissioner's review of its proposed access plan, a health carrier must respond to a ~~departmental~~ the commissioner's request for information within 30 calendar days after the date of the request. If the response remains incomplete, the ~~department~~ commissioner may grant the health carrier a second 30-calendar day period within which to submit a complete response. If, after two ~~departmental~~ requests by the commissioner for information, the health carrier fails to provide information that the ~~department~~ commissioner deems sufficient to satisfy its requests, the access plan will be disapproved and the health carrier will be required to submit a new proposed access plan prior to enrolling initial or additional enrollees.

(3) The total number of days allowed for the review of a given proposed access plan may not exceed 120 calendar days, including both time spent by the ~~department~~ commissioner in review of the proposed plan and any time granted to a

health carrier to respond to ~~departmental~~ the commissioner's requests for additional information.

AUTH: 33-36-105, MCA

IMP: 33-36-105, 33-36-201, MCA

6.6.8806 ACCESS PLAN UPDATES (1) Health carriers shall be responsible for monitoring the status of their networks and must submit an updated access plan to the ~~department~~ commissioner within 30 calendar days after a ~~significant material~~ change in the status of their network. For the purposes of this rule, a ~~significant material~~ change is a change in the composition of a health carrier's provider network or a change in the size or demographic characteristics of the population enrolled with the health carrier that renders the health carrier's network non-compliant with one or more of the network adequacy standards set forth at ~~in~~ ARM 37.108.215, 37.108.219 and 37.108.227 ~~6.6.8815, 6.6.8819, and 6.6.8827~~. If the revised access plan is not submitted within 30 calendar days after the material change in network status occurs, the health carrier must cease enrolling new recipients in the affected geographic service area until the revised access plan is approved by the ~~department~~ commissioner. Review of the revised access plan is subject to the procedures and consequences outlined in ~~ARM 37.108.205~~ 6.6.8805.

(2) In addition to the requirement in (1); ~~above~~,

(a) the health carrier must submit an updated access plan to the department commissioner pursuant to 33-36-201(4), MCA; and by at least 2 years after the date the carrier's access plan was last approved by the department.

(b) health carriers must file an updated access plan with the commissioner if the number of providers in the overall provider network or in any specialty provider network decreases by more than 5% during the year in any single geographic service area or in the overall network. The carrier must file the plan within 30 days of the date the carrier learns of the decrease.

AUTH: 33-36-105, MCA

IMP: 33-36-105, 33-36-201, MCA

6.6.8807 ACCESS PLAN SPECIFICATIONS (1) In addition to meeting the requirements of 33-36-201(6), MCA, an access plan for each health carrier offered in Montana must describe or contain the following:

(a) a list of participating providers which describes the type of provider, their specialty or credentials, and also their names, business addresses, zip codes, and phone numbers. The list must indicate which providers are accepting new patients;

(b) the health carrier's policy for making referrals within and outside of the network including, at a minimum, the health carrier's method for complying with each of the standards set forth in ~~ARM 37.108.228, 37.108.229 and 37.108.235~~ 6.6.8828, 6.6.8829, and 6.6.8835;

(c) the health carrier's process for monitoring on a periodic basis the need for and satisfaction with health care services of the enrolled population and ensuring on an ongoing basis, the sufficiency of the network to meet those needs and, at a

minimum, the health carrier's methods for complying with each of the standards set forth in ARM ~~37.108.240~~ 6.6.8840;

(d) the health carrier's policy to address the needs of enrollees with limited English proficiency and/or illiteracy, those with diverse cultural and ethnic backgrounds, and those with physical and mental disabilities, in order to ~~insure~~ ensure that these characteristics do not pose barriers to gaining access to services. The policy shall, at a minimum, describe the health carrier's methods for complying with each of the standards set forth in ARM ~~37.108.236~~ 6.6.8836; and

(e) a copy of the health benefit plan's booklet or policy or certificate of coverage, a summary of benefits for each policy (if available), the list of network providers for each policy, and any other important information about the health carrier's services and features which must be provided by the health carrier to either potential enrollees or covered enrollees. This information must be presented in language that is comprehensible to the average layperson. The information to be provided includes, but is not limited to:

(i) a listing of participating providers, as described in (1)(a) ~~above~~;

(ii) a summary description of the health carrier's standards for provider credentials and methodology for reviewing provider credentials on an ongoing basis required by ARM ~~37.108.216~~ 6.6.8816;

(iii) the procedures in place for selecting and changing providers;

~~(iv) a copy of the information filed with the commissioner of insurance detailing the health carrier's benefits, including a comprehensive list of covered and non-covered services;~~

~~(v)-(iv)~~ the health carrier's policy regarding enrollee responsibility for co-insurance, copayments, and deductibles;

~~(vi)~~ (v) a detailed description of the health carrier's procedures along with authorization for specialty care that comply with ARM ~~37.108.228~~ 6.6.8828, a schedule of the fees, including co-insurance, copayments, and deductibles, for which an enrollee will be responsible;

~~(vii)~~ (vi) policies pertaining to approval of and access to emergency services that meet the requirements of ARM ~~37.108.214~~ 6.6.8814;

~~(viii)~~ (vii) telephone numbers and procedures for contacting an authorized representative of the health carrier who can facilitate review of post-evaluation or post-stabilization services required immediately after receipt of emergency services;

~~(ix)~~ (viii) a description of the health carrier's grievance procedures, including specific instructions and guidelines for filing and appealing grievances;

~~(x)~~ (ix) a policy regarding use of and payment for in-network services; and

~~(xi)~~ (x) a policy regarding use of and payment for out-of-network services;

(f) the health carrier's method of providing and paying for emergency screening and services 24 hours a day, 7 days a week, in accordance with ARM ~~37.108.214~~ 6.6.8814;

(g) a process for enabling enrollees to change primary care professionals that meets the standards of ARM ~~37.108.235~~ 6.6.8835;

(h) a process for transfer of enrollees to other providers must include a provision for transitional care as described in ARM ~~37.108.229~~ 6.6.8829;

(i) the process used to address and correct instances where a health carrier has an insufficient number or type of participating providers accessible to enrollees

to provide a covered benefit. This process must comply with the requirements of ~~ARM 37.108.219 and 37.108.220~~ 6.6.8819 and 6.6.8820; and

(j) the health carrier's procedures for complying with geographic accessibility requirements as outlined in ~~ARM 37.108.219 and 37.108.220~~ 6.6.8819 and 6.6.8820.

AUTH: 33-36-105, MCA
IMP: 33-36-105, 33-36-201, MCA

6.6.8808 ACCESS CRITERIA (1) The ~~department~~ commissioner will utilize the criteria set forth in this chapter and Title 33, chapter 36, MCA, to determine whether the network maintained by a health carrier offering a managed care plan in Montana is sufficient in numbers and type of providers.

AUTH: 33-36-105, MCA
IMP: 33-36-105, 33-36-201, MCA

6.6.8820 EXCEPTIONS TO GEOGRAPHIC ACCESS CRITERIA (1) The ~~department~~ commissioner may grant exceptions to the geographic accessibility standard in ~~ARM 37.108.219~~ 6.6.8819 if good cause to do so exists.

(2) Good cause includes but is not limited to the circumstance where the health carrier has documented a good faith effort to negotiate a contract with local providers but has failed to reach an agreement within 60 days after the offer of a written contract from the health carrier. A good faith effort means an honest effort with the intent to deal fairly with providers and includes offering terms and conditions at least as favorable as those offered to other entities providing the same or similar services.

AUTH: 33-36-105, MCA
IMP: 33-36-105, 33-36-201, MCA

6.6.8841 LETTERS OF INTENT (1) In order to demonstrate that its network is adequate, a health carrier may utilize letters of intent from individual providers with whom it does not yet have a contract, so long as the providers do not constitute more than 15% of the total network. If letters of intent from providers are utilized, within 6 months after the access plan is submitted to the ~~department~~ commissioner, the health carrier must submit to the ~~department~~ commissioner verification that it has an adequate network.

AUTH: 33-36-105, MCA
IMP: 33-36-105, 33-36-201, MCA

5. CSI proposes to repeal the following rules:

6.6.8850 CORRECTIVE ACTION

AUTH: 33-36-105, MCA

IMP: 33-36-105, MCA

6.6.8851 APPEAL FROM DEPARTMENT DECISION

AUTH: 2-4-201, 33-36-105, MCA

IMP: 2-4-201, 33-36-105, MCA

6. REASON: The Commissioner of Securities and Insurance, Montana State Auditor, Troy Downing (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating business of insurance. These amendments are necessary to ensure compliance with the Managed Care Plan Network Adequacy and Quality Assurance Act, the administration of which was transferred from DPHHS to CSI by House Bill 156, enacted by the 68th Montana Legislature. The above-stated amendments conform the already-existing rules to the changes made by HB 156 and to CSI's operations.

7. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Laura Shirliff, Digital and Creative Services Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3413; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., March 8, 2024.

8. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Laura Shirliff at the above address no later than 5:00 p.m., March 8, 2024.

9. If the agency receives requests for a public hearing on the proposed actions from either 10 or 25 percent, whichever is less, of the persons directly affected by the proposed actions; 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 10 persons based on a conservative estimate of managed care members.

10. CSI 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 must 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. Written request may be mailed or delivered to the contact person in paragraph 8 or made by completing a request form at any rules hearing held by CSI.

11. An electronic copy of this proposal notice is available through the Secretary of State's website at <http://sosmt.gov/ARM/Register>.

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

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

/s/ Ole Olson
Ole Olson
Rule Reviewer

/s/ Mary Belcher
Mary Belcher
Deputy Auditor
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State January 30, 2024.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 6.6.8901, 6.6.8905, 6.6.8906,	)	AMENDMENT, REPEAL, AND
6.6.8907, 6.6.8910, 6.6.8911,	)	ADOPTION
6.6.8915, and 6.6.8916, the repeal of)	
ARM 6.6.8920 and 6.6.8921, and the	)	NO PUBLIC HEARING
adoption of NEW RULE I pertaining	)	CONTEMPLATED
to Quality Assurance for Managed)	
Care Plans)	

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to amend, repeal, and adopt the above-stated rules.

2. The 68th Montana Legislature passed House Bill 156, which transferred the authority and operation of the Managed Care Plan Network Adequacy and Quality Assurance Act from the Department of Public Health and Human Services (DPHHS) to CSI. The first step in implementing the relevant sections of HB 156 occurred on October 20, 2023, when the commissioner published MAR Notice No. 6-283, which, effective January 1, 2024, transferred rules pertaining to Quality Assurance for Managed Care Plans from DPHHS to CSI. The second step in implementing the relevant sections of HB 156 is amending the rules to conform to the changes made by HB 156 and to CSI operations, which is accomplished by the amendments proposed in this notice.

3. CSI 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 accommodation, contact CSI no later than 5:00 p.m. on February 20, 2024, to advise us of the nature of the accommodation that you need. Please contact Laura Shirliff, Digital and Creative Services Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-3326148; fax (406) 444-3413; TDD (406) 444-3246; or e-mail csi@mt.gov.

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

6.6.8901 PURPOSE (1) The purpose of these rules is to implement the quality assurance provisions of the Montana Managed Care Plan Network Adequacy and Quality Assurance Act specified in Title 33, chapter 36, part 3, MCA. These rules establish mechanisms for the ~~department~~ commissioner to evaluate quality assurance activities of health carriers providing managed care plans in Montana.

AUTH: 33-36-105, MCA
IMP: 33-36-102, MCA

6.6.8905 QUALITY ASSURANCE STRUCTURE AND ACCREDITATION

(1) The health carrier shall appoint, prior to commencing operation, a medical physician licensed to practice in the state of Montana to advise, oversee, and actively participate in the implementation and operation of the quality assurance program.

(2) The health carrier may delegate quality assurance activities. The health carrier shall retain responsibility for the performance of all delegated activities and shall develop and implement review and reporting requirements to ~~assure~~ ensure that the delegated entity performs all delegated quality assurance activities.

(3) A health carrier whose managed care quality assurance plan has been accredited by a nationally recognized accrediting organization shall initially provide a copy of the accreditation certificate or outcome report and the accrediting standards used by the accrediting organization to the ~~department~~ commissioner.

(a) If the ~~department~~ commissioner finds that the standards of the nationally recognized accrediting organization meet or exceed the ~~department's~~ commissioner's standards, the ~~department~~ commissioner will approve the health carrier's quality assurance program.

(b) After approval by the ~~department~~ commissioner, the accredited health carrier shall provide proof of its continued accreditation annually to the ~~department~~ commissioner.

~~(c) An accredited health carrier whose quality assurance plan is approved by the department is not required to comply with ARM 37.108.505. If the accredited health carrier offers a closed or combination managed care plan, the health carrier must comply with ARM 37.108.510 and 37.108.515. All accredited health carriers, regardless of their offering of closed, combination, or open plans, must comply with ARM 37.108.507, 37.108.515, 37.108.516, and 37.108.520 6.6.8907, 6.6.8910, 6.6.8915, and 6.6.8916.~~

(d) The ~~department~~ commissioner will maintain a list of its approved accrediting organizations whose standards have been determined by the ~~department~~ commissioner to meet or exceed the ~~department's~~ commissioner's quality assurance standards.

AUTH: 33-36-105, MCA

IMP: 33-36-105, 33-36-302, MCA

6.6.8906 WRITTEN DESCRIPTION OF QUALITY ASSESSMENT PLAN

(1) The health carrier shall implement a written quality assessment plan that is evaluated annually and updated as necessary. The plan must be submitted to the ~~department~~ commissioner by ~~October~~ June 1 of each year. The plan must describe:

(a) the plan's mission, goals, and objectives;

(b) the plan's organizational structure and the job titles of the personnel responsible for quality assessment;

(c) the scope of the quality assessment plan's activities, including:

(i) specific diagnoses, conditions, or treatments targeted for review to improve health care services and health outcomes;

- (ii) mechanisms to evaluate enrollees' health and health care services in relation to current medical research, knowledge, standards, and practices;
 - (iii) communication processes by which the findings generated by the quality assessment program are communicated to providers and consumers to improve the health of enrollees; and
 - (iv) mechanisms to evaluate the service performance of the health carrier and primary care physicians.
- (2) The written quality assessment plan must be signed by the health carrier's corporate officer certifying that the plan meets the department's commissioner's requirements.
- (3) The department commissioner and each health carrier will meet annually to review and approve the written quality assessment plans and their outcomes.

AUTH: 33-36-105, MCA

IMP: 33-36-105, 33-36-302, MCA

6.6.8907 COMPONENTS OF QUALITY ASSESSMENT ACTIVITIES

- (1) Annually, the health carrier shall evaluate its quality assessment activities by using the following ~~2020~~ 2024 HEDIS measures:
- (a) childhood immunization;
 - (b) breast cancer screening;
 - (c) cervical cancer screening;
 - (d) comprehensive diabetes care; and
 - (e) HEDIS/Consumer Assessment of Health Plan Survey (CAHPS) for adults.
- (2) The health carrier shall record organizational components that affect accessibility, availability, comprehensiveness, and continuity of care, including:
- (a) referrals;
 - (b) case management;
 - (c) discharge planning;
 - (d) appointment scheduling and waiting periods for all types of health care services;
 - (e) second opinions, as applicable;
 - (f) prior authorizations, as applicable;
 - (g) provider reimbursement arrangements that contain financial incentives that may affect the care provided; and
 - (h) other systems, procedures, or administrative requirements used by the health carrier that affect the delivery of care.
- (3) The health carrier may meet the requirements in (2) by submitting information to the department commissioner regarding network adequacy as specified in ~~ARM 37-108-204~~ 6.6.8801, et seq., as long as the information is consistent with what is required in (2).
- (4) The department commissioner adopts and incorporates by reference the HEDIS ~~2020~~ 2024 measures for the categories listed in (1)(a) through (e). The HEDIS ~~2020~~ 2024 measures are developed by the National Committee for Quality Assurance and provide a standardized mechanism for measuring and comparing the quality of services offered by managed care health plans. Copies of the HEDIS ~~2020~~ 2024 measures are available from the National Committee for Quality

Assurance, 1100 13th St. NW, Suite 1000, Washington, D.C. 20005 or at www.ncqa.org.

AUTH: 33-36-105, MCA
IMP: 33-36-105, 33-36-302, MCA

6.6.8910 QUALITY IMPROVEMENT (1) ~~By October 1 of each year~~ At the commissioner's request, the health carrier shall provide documentation on its quality improvement activities and an evaluation of the effectiveness of the previous year's quality improvement activities. Such documentation must include the health carrier's identification of quality assessment problems and opportunities for improving care through:

- (a) ongoing monitoring of process, structure, and outcomes of patient care or clinical performance;
- (b) evaluation of the data collected from ongoing monitoring activities to identify problems in patient care or clinical performance using criteria developed and applied by health care professionals;
- (c) measurable objectives for each improvement action within the reporting year, including the degree of expected change in persons or situations;
- (d) time frames for quality improvement action; and
- (e) parties responsible for implementing quality improvement action.

AUTH: 33-36-105, MCA
IMP: 33-36-105, 33-36-303, MCA

6.6.8911 CLINICAL FOCUSED STUDY (1) The health carrier shall conduct a focused study relevant to the quality of its services for enrollee care. The health carrier must document the clinical focused study and submit it to the ~~department commissioner at the commissioner's request~~ by October 1 of each year.

- (2) The health carrier shall select topics for the focused study that are justified based on any of the following considerations:
- (a) areas of high volume;
 - (b) areas of high risk;
 - (c) areas where problems are expected or where they have occurred in the past;
 - (d) areas that can be corrected or where prevention may have an impact;
 - (e) areas that have potential adverse health outcomes; and
 - (f) areas where enrollee complaints have occurred.
- (3) The health carrier shall document the study methodology employed, including:
- (a) the focused study question;
 - (b) the sample selection;
 - (c) data collection;
 - (d) evaluation criteria; and
 - (e) measurement techniques.

AUTH: 33-36-105, MCA

IMP: 33-36-303, MCA

6.6.8915 ENROLLEE COMPLAINT SYSTEM (1) The health carrier shall have an internal complaint system for enrollees. Such a system shall comply with the requirements of 33-31-303, MCA, and ~~ARM 6.6.2509(4)~~.

(2) The health carrier shall conduct ongoing evaluations of all enrollee complaints, including complaints about the health carrier's services filed with participating providers. Ongoing evaluations must be conducted in accordance with ~~ARM 37.108.510~~ 6.6.8910. The data on complaints must be reported and evaluated by the health carrier at least quarterly.

(3) Evaluation methods must permit the health carrier to track specific complaints, assess trends, and establish that corrective action is implemented and effective in improving the identified problem(s).

(4) The health carrier shall document and monitor the effectiveness of its evaluation of the enrollee complaint system and communicate it to the involved providers, enrollees, and the ~~department~~ commissioner upon request. The information is subject to the confidentiality requirements provided in 33-36-305, MCA.

AUTH: 33-36-105, MCA

IMP: 33-36-303, MCA

6.6.8916 RECORDING CONSUMER SATISFACTION (1) The health carrier shall record consumer components that identify enrollees' perceptions on the quality of the health carrier's services, including:

(a) enrollee satisfaction surveys; and

(b) enrollee complaints, including:

(i) the health carrier's resolution of the complaints through its internal procedures;

~~(ii) independent peer reviewers' decision pursuant to 33-37-103, et seq., MCA, and ARM 37.108.301, et seq.;~~

~~(iii) (ii)~~ arbitration decisions; and

~~(iv) (iii)~~ court decisions.

(2) The health carrier shall submit documentation of its handling of consumer satisfaction to the ~~department~~ commissioner at the commissioner's request by ~~October 1 of each year.~~

(3) The health carrier may meet the requirements in (1)(a) ~~of this rule~~ regarding enrollee satisfaction surveys by submitting to the ~~department~~ commissioner the information required for network adequacy as specified in ~~ARM 37.108.204~~ 6.6.8801, et seq., as long as the information is consistent with what is required in (1) (a) ~~of this rule.~~

(4) The identities of enrollees involved in recording consumer satisfaction are subject to the confidentiality requirements provided in 33-36-305, MCA.

AUTH: 33-36-105, MCA

IMP: 33-36-303, MCA

5. CSI proposes to repeal the following rules:

6.6.8920 CORRECTIVE ACTION

AUTH: 33-36-105, MCA

IMP: 33-36-105, 33-36-401, MCA

6.6.8921 INFORMAL RECONSIDERATION OF DEPARTMENT DECISION

AUTH: 33-36-105, MCA

IMP: 33-36-401, MCA

6. The rule proposed to be adopted is as follows:

NEW RULE I NOTICE OF DISAGREEMENT AND PROGRESSION TO ENFORCEMENT ACTION (1) If a health carrier disagrees with a corrective action recommended by the commissioner pursuant to 33-36-401(1), MCA, the health carrier must provide a written notice to the commissioner containing a short and plain statement of the grounds for disagreement with the corrective action.

(2) Once the carrier provides written notice to the commissioner pursuant to this rule, the matter proceeds as an enforcement action for non-compliance pursuant to 33-36-401(2)(a), MCA. The enforcement action will be held in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, and ARM 6.2.101.

AUTH: 33-36-105, MCA

IMP: 33-36-401, MCA

7. REASON: The Commissioner of Securities and Insurance, Montana State Auditor, Troy Downing (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating business of insurance. These amendments are necessary to ensure compliance with the Managed Care Plan Network Adequacy and Quality Assurance Act, the administration of which was transferred from DPHHS to CSI by House Bill 156, enacted by the 68th Montana Legislature. The above-stated amendments conform the already-existing rules to the changes made by HB 156 and to CSI's operations.

8. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Laura Shirliff, Digital and Creative Services Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3413; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., March 8, 2024.

9. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any

written comments to Laura Shirliff at the above address no later than 5:00 p.m., March 8, 2024.

10. If the agency receives requests for a public hearing on the proposed actions from either 10 or 25 percent, whichever is less, of the persons directly affected by the proposed actions; 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 10 persons based on a conservative estimate of managed care members.

11. CSI 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 must 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. Written requests may be mailed or delivered to the contact person in paragraph 8 or made by completing a request form at any rules hearing held by CSI.

12. An electronic copy of this proposal notice is available through the Secretary of State's website at <http://sosmt.gov/ARM/Register>.

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

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

/s/ Ole Olson
Ole Olson
Rule Reviewer

/s/ Mary Belcher
Mary Belcher
Deputy Auditor
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State January 30, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I pertaining to the) PROPOSED ADOPTION
administration of the Regional)
Assistance Program)

TO: All Concerned Persons

1. On February 29, 2024, at 11:00 a.m., the Department of Commerce (department) will hold a public hearing via zoom to consider the proposed adoption of the above-stated rule.

Video: https://mt.gov.zoom.us/webinar/register/WN_UbBFXRpFTv2VVEvY4FvN8w

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this process or need an alternative accessible format of this notice. If you require accommodation, please contact the department by 5:00 p.m. on February 27, 2024, to advise us of the nature of the accommodation you are requesting. Please contact the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; fax (406) 841-2771; TDD (406) 841-2702; or e-mail docadministrativerules@mt.gov.

3. The proposed new rule is as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES
GOVERNING THE GUIDELINES FOR THE REGIONAL ASSISTANCE PROGRAM

(1) The department adopts and incorporates by reference Guidelines for the Regional Assistance Program (Program or RAP), with the most current version being posted on the Tourism Grant Program website (Guidelines), as rules governing how the department will administer the Program.

(2) The Guidelines address the following:

- (a) Summary;
- (b) Definitions;
- (c) Eligible Applicants;
- (d) Eligible Projects;
- (e) Funding Availability;
- (f) How to Apply;
- (g) Application Review Process;
- (h) Application Review Criteria;
- (i) Award Process and Contract; and
- (j) Program Contact.

(3) Copies of the Guidelines may be obtained from the department's Destination MT Division, Office of Tourism, 301 South Park Avenue, P.O. Box

200501, Helena, Montana, 59620-0501, or on its web site at <https://brand.mt.gov/Programs/Office-Of-Tourism/Tourism-Grant-Program>.

AUTH: 90-1-122, MCA

IMP: 90-1-122, MCA

REASON: The proposed new rule is necessary to implement and administer the Regional Assistance Program in accordance with SB 540, which was enacted by the 2023 Montana Legislature.

Section 1 of SB 540 authorizes the department to provide funding to eligible applicants to support Montana tourism.

The department proposes adopting NEW RULE I, which incorporates by reference the Guidelines. The proposed Guidelines can be reviewed on the department's web site at <https://brand.mt.gov/Programs/Office-Of-Tourism/Tourism-Grant-Program>. Interested persons may comment on the Guidelines in accordance with this notice.

Adopting the Guidelines is necessary to provide public notice on how the department plans to administer the Regional Assistance Program in compliance with SB 540.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0533; telephone (406) 841-2596; fax (406) 841-2871; TDD (406) 841-2702; or e-mail DOCAdministrativerules@mt.gov, and must be received no later than 5:00 p.m., March 8, 2024.

5. The department's Office of Legal Affairs will preside over and conduct this hearing.

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

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 540, Representative Daniel Zolnikov, was contacted on January 30, 2024, by e-mail at Daniel.Zolnikov@legmt.gov.

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

/s/ John Semmens
JOHN SEMMENS
Rule Reviewer

/s/ Mandy Rambo
MANDY RAMBO
Deputy Director
Department of Commerce

Certified to the Secretary of State January 30, 2024.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 10.53.301 through 10.53.305) PROPOSED AMENDMENT
pertaining to English Language)
Proficiency Content Standards)

TO: All Concerned Persons

1. On March 5, 2024, at 9:00 a.m., the Board of Public Education (board) will hold a public hearing in Room 152 of the Montana State Capitol in Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board 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 board no later than 5:00 p.m. on February 23, 2024, to advise us of the nature of the accommodation that you need. Please contact McCall Flynn, Executive Director, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0300; or email bpe@mt.gov.

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

10.53.301 ENGLISH LANGUAGE PROFICIENCY CONTENT STANDARD 1

(1) To satisfy the requirements of English language proficiency content standard 1, English language learners ~~must~~ communicate for social and instructional purposes within the school setting.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, MCA

10.53.302 ENGLISH LANGUAGE PROFICIENCY CONTENT STANDARD 2

(1) To satisfy the requirements of English language proficiency content standard 2, English language learners ~~must~~ communicate information, ideas, and concepts necessary for academic success in the content area of language arts.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, MCA

10.53.303 ENGLISH LANGUAGE PROFICIENCY CONTENT STANDARD 3

(1) To satisfy the requirements of English language proficiency content standard 3, English language learners ~~must~~ communicate information, ideas, and concepts necessary for academic success in the content area of mathematics.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, MCA

10.53.304 ENGLISH LANGUAGE PROFICIENCY CONTENT STANDARD 4

(1) To satisfy the requirements of English language proficiency content standard 4, English language learners ~~must~~ communicate information, ideas, and concepts necessary for academic success in the content area of science.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, MCA

10.53.305 ENGLISH LANGUAGE PROFICIENCY CONTENT STANDARD 5

(1) To satisfy the requirements of English language proficiency content standard 5, English language learners ~~must~~ communicate information, ideas, and concepts necessary for academic success in the content area of social studies.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, MCA

REASON: The board proposes to amend these rules, which were last amended in 2011, to align with the WIDA English Language Development Framework, 2020 Edition.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: McCall Flynn, Executive Director, Board of Public Education, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59620; telephone (406) 444-0300; or email bpe@mt.gov and must be received no later than 5:00 p.m. on March 8, 2024.

5. McCall Flynn, executive director of the Board of Public Education, has been designated to preside over and conduct this hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name added to the list shall make a written request that includes the name, email, 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 email unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the board.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

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

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

/s/ McCall Flynn
McCall Flynn
Executive Director
Board of Public Education

/s/ Tim Tharp
Tim Tharp
Chair
Board of Public Education

Certified to the Secretary of State January 30, 2024.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 10.57.102, 10.57.114,	)	PROPOSED AMENDMENT
10.57.215, 10.57.410, 10.57.411,)	
10.57.412, 10.57.414, 10.57.415,)	
10.57.418, 10.57.419, 10.57.420,)	
10.57.421, 10.57.424, 10.57.425,)	
10.57.427, 10.57.428, 10.57.431,)	
10.57.432, 10.57.434, 10.57.435, and)	
10.57.437 pertaining to Educator)	
Licensure Standards)	

TO: All Concerned Persons

1. On March 5, 2024, at 10:00 a.m., the Board of Public Education (board) will hold a public hearing in Room 152 of the Montana State Capitol in Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board 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 board no later than 5:00 p.m. on February 23, 2024, to advise us of the nature of the accommodation that you need. Please contact McCall Flynn, Executive Director, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0300; or email bpe@mt.gov.

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

10.57.102 DEFINITIONS The following definitions apply to this chapter.

(1) remains the same.

(2) "Accredited specialist program" means:

(a) for school psychologists, a program for the preparation of specialists approved or accredited by:

(i) the National Association of School Psychologists (NASP); and or

(ii) a state board of public education or a state agency;

(b) for school counselors, a program for the preparation of specialists approved or accredited by:

(i) the Council for the Accreditation of Counseling and Related Education Programs (CACREP); or

(ii) a state board of public education or a state agency.

(3) and (4) remain the same.

(5) "Approved preparation program" means:

(a) An educator preparation program accredited by the ~~National Council for the Accreditation of Teacher Education (NCATE)~~ or the Council for the Accreditation

of Educator Preparation (CAEP), the Association for Advancing Quality in Educator Preparation (AAQEP), or the Montessori Accreditation Council for Teacher Education (MACTE). A MACTE educator preparation program is subject to the following restrictions:

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

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

(b) An educator preparation program at a an regionally institutionally accredited college or university approved or accredited by a state board of education or state education agency; or

(c) An educator preparation program approved by a state board of education or state education agency that leads to licensure in the state of preparation.

(6) remains the same.

(7) "College credit" means credit received for completion of a course from a an regionally institutionally accredited college or university.

(8) "Course work GPA" means the weighted average of teacher education program course grades, weighted by credit hours, and calculated over the defined period of study at a an regionally institutionally accredited college or university. The weights reflect the relative contributions of teacher education program course requirements, including content area coursework, based on contact hours or credits earned. The weighted average is calculated as follows:

(a) through (10) remain the same.

(11) "Institutionally accredited" means a college or university accredited by one of the following:

(a) Higher Learning Commission;

(b) Middle States Association of Schools and Colleges;

(c) New England Association of Schools and Colleges;

(d) Northwest Commission on Colleges and Universities;

(e) Southern Association of Schools and Colleges; or

(f) Western Association of Schools and Colleges.

(11) through (13) remain the same, but are renumbered (12) through (14).

~~(14) "Regionally accredited" means a college or university accredited by one of the following:-~~

~~(a) Higher Learning Commission;-~~

~~(b) Middle States Association of Schools and Colleges;~~

~~(c) New England Association of Schools and Colleges;~~

~~(d) Northwest Commission on Colleges and Universities;~~

~~(e) Southern Association of Schools and Colleges; or~~

~~(f) Western Association of Schools and Colleges.~~

(15) and (16) remain the same.

(17) "Unrestricted license" means a current ~~renewable~~ license that is not an emergency or provisional license.

(18) and (19) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-4-106, MCA

10.57.114 INTERNSHIPS (1) and (2) remain the same.

(3) If entering into internship agreements;

(a) the accredited Montana educator preparation program must report each enrolled intern to the Superintendent of Public Instruction no later than November 15 of each year; and

(b) the district must approve internship applications.

(i) Superintendent applications must be approved by the district board chair or county superintendent.

(ii) All other internship applications must be approved by the district superintendent.

(4) through (7) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-2-121, 20-7-101, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.57.215 PROFESSIONAL DEVELOPMENT AND RENEWAL REQUIREMENTS (1) through (3) remain the same.

(4) Activities acceptable to renew or obtain licenses are professional development, training, workshops, or coursework consistent with P-12 public school curriculum and may include:

(a) credits earned from a an regionally institutionally accredited college or university;

(b) through (5) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-121, 20-4-102, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-4-102, 20-4-108, MCA

10.57.410 CLASS 2 STANDARD TEACHER'S LICENSE (1) and (2) remain the same.

(3) To obtain a Class 2 standard teacher's license an applicant must submit verification of all of the following:

(a) a bachelor's or master's degree from a an regionally institutionally accredited college or university, or a completed evaluation of foreign transcripts that demonstrates equivalency to a bachelor's degree through a National Association of Credential Evaluation Services (NACES) agency;

(b) through (5) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-121, 20-4-102, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-4-102, 20-4-103, 20-4-106, 20-4-108, MCA

10.57.411 CLASS 1 PROFESSIONAL TEACHER'S LICENSE (1) through (2)(b) remain the same.

(c) a master's degree in education or an endorsable teaching area(s) from a an regionally institutionally accredited college or university or certification by the National Board for Professional Teaching Standards.

(3) and (4) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.412 CLASS 1 AND 2 ENDORSEMENTS (1) remains the same

(2) Areas approved for endorsement on Class 1 and 2 licenses include the following: agriculture, art K-12, biology, business education, chemistry, communication, computer science, early childhood (P-3), earth science, economics, elementary education (K-8), English, English as a second language K-12, family and consumer sciences, geography, health, health and physical education K-12, history, industrial trades and technology education, journalism, library K-12, mathematics, ~~middle grades (4-8)~~, music K-12, physical education K-12, physics, political science, psychology, reading K-12, ~~school counseling K-12~~, science (broadfield), social studies (broadfield), sociology, special education P-12, special education P-12 hearing impairment, special education P-12 vision impairment, theater, traffic education, and world languages K-12.

(3) and (4) remain the same.

(5) To obtain an early childhood (P-3), elementary (K-8), middle grades (4-8 content-specific), secondary (5-12 content-specific), K-12, or P-12 (special education) endorsement, an applicant must provide verification of completion of an approved educator preparation program at the grade level(s) identified by the program, including supervised teaching experience or a waiver of this requirement if the applicant has previously had supervised teaching experience.

(6) through (8) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.414 CLASS 3 ADMINISTRATIVE LICENSE - SUPERINTENDENT ENDORSEMENT (1) remains the same.

(a) an education specialist, master's, or doctoral degree from a an regionally institutionally accredited college or university in education, ~~or~~ education leadership, or a P-12 education related area of study;

(b) remains the same.

(c) completion of ~~courses~~ coursework covering Montana School Finance, Montana School Law, and Montana Collective Bargaining and Employment Law. In order to qualify, such ~~courses~~ coursework must have been provided either by:

(i) through (g) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.415 CLASS 3 ADMINISTRATIVE LICENSE - PRINCIPAL ENDORSEMENTS (1) remains the same.

(a) a minimum of three years of teaching or school counseling experience with a ~~standard, unrestricted~~ license as defined in ARM 10.57.102(19) at the level of the requested endorsement;

(b) ~~a an~~ education specialist, master's degree from a an regionally institutionally accredited college or university in education, or education leadership, or a P-12 education related area of study;

(c) remains the same.

(d) ~~completion of three semester credits~~ of a college courses in school law, including special education law; and

(e) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.418 CLASS 3 ADMINISTRATIVE LICENSE - SUPERVISOR ENDORSEMENT (1) and (1)(a) remain the same.

(b) completion of a master's degree in the area requested for endorsement at ~~a an~~ regionally institutionally accredited college or university;

(c) through (f) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.419 CLASS 3 ADMINISTRATIVE LICENSE - SPECIAL EDUCATION SUPERVISOR ENDORSEMENT (1) remains the same.

(a) completion, at a ~~a an~~ regionally institutionally accredited college or university, of a master's degree in special education or a master's degree in the following special education-related service fields: school psychologist, speech-language pathologist, audiologist, physical therapist, occupational therapist, registered nurse, clinical social worker, or clinical professional counselor;

(b) through (g) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.420 CLASS 4 CAREER AND TECHNICAL EDUCATION LICENSE

(1) through (2)(a) remain the same.

(b) A Class 4B license issued to individuals with a certificate of completion from an apprenticeship program or associate or bachelor's degree from a ~~a an~~ regionally institutionally accredited college or university, but who do not hold a valid Montana teaching license with the appropriate career and technical education endorsement; and

(c) through (5) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.421 CLASS 4 ENDORSEMENTS (1) Recognized occupations eligible for a Class 4 license shall be evaluated on an annual basis by the Superintendent of Public Instruction. Appropriate career and technical education areas acceptable for endorsement on the Class 4 license include but are not limited to the following: agriculture business, agriculture mechanics, auto body, automotive technology, aviation, building maintenance, building trades, business marketing, computer coding, computer information systems, culinary arts, diesel mechanics, drafting, electronics, emergency medical technician (EMT), engineering, fire and disaster services, graphic arts, health science education, heavy equipment operations, horticulture, industrial mechanics, livestock production, machining, metals, plant and soil sciences, Reserve Officer Training Corps (ROTC) instruction, small engines, stagecraft, teacher education, traffic education, videography, and welding.

(2) through (4)(g) remain the same.

(h) For traffic education:

(i) meet the requirements of ARM 10.13.310; or

~~(5)~~(ii) A Class 4A, 4B, or 4C career and technical education license may be approved to teach traffic education if the license meets the requirements of ARM 10.13.310.

(6) remains the same but is renumbered (5).

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.424 CLASS 5 PROVISIONAL LICENSE (1) through (3) remain the same.

(4) A Class 5B provisional license is valid for a term of three years, is not renewable, and may not be reinstated. A Class 5B provisional license will be issued to those individuals who hold a bachelor's degree from a an regionally institutionally accredited college or university but have not completed an approved educator preparation program.

(a) through (6) remain the same.

(a) a bachelor's degree from a an regionally institutionally accredited college or university; and

(b) through (7) remain the same.

(8) Extension may be granted to a Class 5B or 5C provisional license at the discretion of the Superintendent of Public Instruction as authorized in ARM 10.57.109. Requests for extension must be submitted by the licensee and supported by the accredited educator preparation program. A request for extension must demonstrate evidence of extreme hardship or other circumstances beyond the control of the licensee which prevented timely completion of the agreed upon plan of study.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.425 CLASS 5 PROVISIONAL LICENSE – ENDORSEMENTS

(1) remains the same.

(2) Areas approved for endorsement on Class 5 provisional license include the following: agriculture, art K-12, biology, business education, chemistry, communication, computer science, early childhood (P-3), earth science, economics, elementary education (K-8), English, English as a second language K-12, family and consumer sciences, geography, health, health and physical education K-12, history, industrial trades and technology education, journalism, library K-12, mathematics, ~~middle grades (4-8)~~, music K-12, physical education K-12, physics, political science, psychology, reading K-12, ~~school counseling K-12~~, science (broadfield), social studies (broadfield), sociology, special education P-12, special education P-12 hearing impairment, special education P-12 vision impairment, theater, traffic education, and world languages K-12.

(3) remains the same.

(4) To obtain an early childhood (P-3), elementary (K-8), middle grades (4-8 content-specific), secondary (5-12 content-specific), K-12 (as delineated in ARM 10.57.412), or P-12 (special education and school psychologist) endorsement, an applicant must provide verification of:

(a) a bachelor's degree from a an regionally institutionally accredited college or university; and

(b) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.427 CLASS 5 PROVISIONAL LICENSE – SUPERINTENDENT ENDORSEMENT (1) remains the same.

(a) a an education specialist, master's, or doctoral degree from a an regionally institutionally accredited college or university in education, ~~or~~ education leadership, or a P-12 education related area of study;

(b) through (e) remain the same.

(f) for those applicants who have not completed ~~the courses~~ coursework covering Montana School Finance, Montana School Law, and Montana Collective Bargaining and Employment Law, in order to qualify, such ~~courses~~ coursework must have been provided either by:

(i) through (2) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.428 CLASS 5 PROVISIONAL LICENSE – PRINCIPAL ENDORSEMENT (1) remains the same.

(a) a an education specialist, master's degree from a an regionally institutionally accredited college or university in education, ~~or~~ education leadership, or a P-12 education related area of study;

(b) through (2) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.431 CLASS 5 PROVISIONAL LICENSE – SUPERVISOR
ENDORSEMENT (1) remains the same.

- (a) a master's degree from ~~a~~ an regionally institutionally accredited college or university in the area requested for supervisory endorsement; and
- (b) and (c) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.432 CLASS 5 PROVISIONAL LICENSE – SPECIALIST
ENDORSEMENT (1) remains the same.

- (a) verification of a master's degree or greater in school psychology or related field from ~~a~~ an regionally institutionally accredited college or university; ~~and or~~
- (b) ~~for those applicants who have not completed an approved specialist preparation program, verification from an approved specialist program, of being within four course deficiencies of completing full requirements as outlined in ARM 10.57.434.~~ verification from the approved specialist program of current enrollment and must sign and file with the Superintendent of Public Instruction a plan of professional intent and evidence of enrollment leading, within three years of the date of validity of the provisional license, to an appropriately endorsed Class 6 license as provided in ARM 10.57.434.
- (2) remains the same.
- (a) verification of a bachelor's degree from an institutionally accredited college or university; and or
- (b) ~~verification from the approved specialist program, of being within four course deficiencies of completing full requirements as outlined in ARM 10.57.435.~~ verification from the approved specialist program of current enrollment and must sign and file with the Superintendent of Public Instruction a plan of professional intent and evidence of enrollment leading, within three years of the date of validity of the provisional license, to an appropriately endorsed Class 6 license as provided in ARM 10.57.435.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.434 CLASS 6 SPECIALIST LICENSE – SCHOOL PSYCHOLOGIST

- (1) To obtain a Class 6 specialist license with a school psychologist endorsement an applicant must provide verification of one of the following:
 - (a) through (c) remain the same.
 - (i) a master's degree or higher in school psychology or a related field from ~~a~~ an regionally institutionally accredited college or university; and
 - (ii) recommendation from ~~a NASP accredited~~ an approved specialist program defined in ARM 10.57.102, ~~attesting to the applicant's qualifications being equivalent~~

~~to NASP training standards, which included a 1200-hour internship experience of which 600 hours were in a P-12 school setting an internship in a P-12 school setting of 600 hours.~~

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.435 CLASS 6 SPECIALIST LICENSE – SCHOOL COUNSELOR

(1) remains the same.

(a) a master's degree from a an regionally institutionally college or university;
and

(b) and (c) remain the same.

(i) a master's degree in school counseling from a an regionally institutionally accredited college or university; and

(ii) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

10.57.437 CLASS 8 DUAL CREDIT POSTSECONDARY FACULTY

LICENSE (1) through (3) remain the same.

(a) verification of faculty employment from the Chief Academic Officer or an appropriate official of the employing regionally institutionally accredited college or university;

(b) remains the same.

(c) recommendation from the Chief Academic Officer from a an regionally institutionally accredited college or university verifying the applicant plans to teach in a subject covered by the K-12 endorsement areas in ARM 10.57.438, and will teach a subject in which the applicant has a major or minor; and

(d) remains the same.

~~(4) Class 8 dual credit license applications will be reviewed by the Certification Standards and Practices Advisory Council for recommendation regarding issuance of the license by the Superintendent of Public Instruction. Denial of an application for licensure shall be appealable to the Board of Public Education pursuant to ARM 10.57.607.~~

(5) remains the same but is renumbered (4).

~~(6)~~(5) A Class 8 license shall not be valid unless the licensee is in an employment relationship with a an regionally institutionally accredited college or university.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

REASON: The board proposes to update the current Educator Licensure Standards in ARM Title 10, chapter 57, based on a review by the Office of Public Instruction and P-20 education stakeholders. The proposed amended rules are necessary to provide clarification and required modifications, based on research-based practice

and improvements in Montana and the nation. Proposed revisions include, but are not limited to, updated definitions, changes to the internship requirements, an addition of content-specific middle school endorsements, an increased flexibility for educator preparation programs, a new traffic education endorsement, and updated requirements for school psychologists and school counselors.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: McCall Flynn, Executive Director, Board of Public Education, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59620; telephone (406) 444-0300; or email bpe@mt.gov, and must be received no later than 5:00 p.m., March 8, 2024.

5. McCall Flynn, executive director of the Board of Public Education, has been designated to preside over and conduct this hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name added to the list shall make a written request that includes the name, email, 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 email unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the board.

7. An electronic copy of this proposal notice is available through the Secretary of State's website at <http://sosmt.gov/ARM/Register>.

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

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

/s/ McCall Flynn
McCall Flynn
Executive Director
Board of Public Education

/s/ Tim Tharp
Tim Tharp
Chair
Board of Public Education

Certified to the Secretary of State January 30, 2024.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 10.63.101, 10.63.102,	)	PROPOSED AMENDMENT AND
10.63.103, 10.63.104, 10.63.107,	)	REPEAL
10.63.109, 10.63.110, 10.63.111,)	
10.63.112, 10.63.113, 10.63.114, and)	
10.63.115 and the repeal of ARM)	
10.63.108 pertaining to early)	
childhood education standards)	

TO: All Concerned Persons

1. On March 5, 2024, at 9:30 a.m., the Board of Public Education (board) will hold a public hearing in Room 152 of the Montana State Capitol in Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The board 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 board no later than 5:00 p.m. on February 23, 2024, to advise us of the nature of the accommodation that you need. Please contact McCall Flynn, Executive Director, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0300; or e-mail bpe@mt.gov.

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

10.63.101 APPLICATION AND PROCEDURES (1) The early childhood education standards are focused on developmentally appropriate supports and strategies to enhance learning outcomes for a child between the ages of 3 and 5 for preschool programs and between the ages of 4 and 5 for early literacy targeted interventions implemented through the classroom-based program for 4-year-olds and summer jumpstart program preceding kindergarten. Use of these standards for a public preschool program is subject to the funding limits of 20-7-117(2) and 20-9-311(7)(a), MCA. Use of these standards for early literacy targeted interventions implemented through the classroom-based program for 4-year-olds and summer jumpstart program preceding kindergarten is subject to the provisions of Title 20, chapter 7, part 18, MCA.

~~(1)~~(2) The trustees of a school district, pursuant to Title 20, chapter 6, MCA, may establish a public preschool early childhood education program to meet the unique developmental needs for children between the ages of 3 and 5 years for preschool programs and between the ages of 4 and 5 for early literacy targeted interventions implemented through the classroom-based program for 4-year-olds and summer jumpstart program preceding kindergarten. When preschool early childhood education programs are established they must be an integral part of the

public school and must be governed according to the following accreditation standards for the ~~preschool~~ early childhood education standards of early learning content and accreditation in coordination with the standards outlined for schools within ARM Title 10, chapter 55, excluding 10.55.601, 10.55.602, 10.55.603, 10.55.704, 10.55.705, 10.55.709, 10.55.710, 10.55.712, 10.55.715, and ARM Title 10, chapter 55, subchapters 10 through 21. For the purposes of the accreditation process detailed in ARM 10.55.606, ~~preschool~~ early childhood education programs will be assessed on the program's assurance standards only.

(2)(3) ~~Preschool~~ Early childhood education programs shall meet this chapter's curriculum, instruction, and program delivery standards, supporting children's development of the knowledge and skills outlined in the content standards in ~~subchapter 3~~ ARM 10.63.110, which describe the expectations for what young children should know, understand, and be able to do across the four core developmental domains of learning upon entrance to kindergarten.

(3)(4) Montana's ~~preschool~~ early childhood education standards shall be reviewed and revised on a five-year cycle beginning July 1, 2017 recurring schedule with input from representatives of accredited schools.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

10.63.102 DEFINITIONS (1) For the purposes of this chapter, the following terms apply:

(a) "Accreditation" means certification by the Board of Public Education that a school meets the adopted standards of the Board of Public Education for a specified school year.

(b) "Assessment" means the gathering, organizing, and evaluation of information about student learning in order to monitor and measure student learning, the effectiveness of the instructional program, and to inform local policies and decisions.

(c) "Developmental domain" means the broad, interrelated categories or dimensions of early childhood development reflective of ~~preschool~~ early childhood education children's learning and growth. The four core domains include ~~emotional/social and emotional~~, physical, ~~communication language~~, and cognitive.

(d) "Early childhood curriculum" means an articulated educational plan for young children, which is grounded in research-based understandings of child development and developmentally appropriate practices. Curriculum guides the teaching process from identifying what to teach, including early content standards in each of the four developmental domains and how to teach, including developing learning experiences based upon individual and group outcomes, and assessing what was learned then using this data to inform future planning and teaching. For early literacy targeted interventions implemented through the classroom-based program for 4-year-olds and summer jumpstart program preceding kindergarten, the curriculum must embrace the four developmental domains while focusing on the subject of literacy with a goal of establishing a trajectory leading to reading proficiency at the end of third grade.

(e) "Learning center" means a self-contained area of the classroom featuring a wide variety of hands-on materials that children can choose and use independently which are organized around a curriculum area (science, math, art, music, dramatic play, literacy) or a specific kind of play material (blocks, sensory, manipulative).

(f) "~~Paraprofessional, assistant teacher, or teacher aide~~" means an adult with the qualifications detailed in ~~ARM 10.63.115~~ 10.63.105 who works under the direct supervision of a teacher and who may work independently in a teacher's absence, but for the majority of the time works directly with the teacher in the same space with the same group of students.

(g) "Teacher" means a licensed individual as defined in ARM 10.55.602, with primary responsibility for a group or class of ~~preschool~~ early childhood education students.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

10.63.103 LEADERSHIP (1) The program leadership shall effectively implement policies, procedures, and systems that support stable staff and strong personnel, fiscal, and program management so all students, families, and staff have high-quality experiences.

(2) Professional development for ~~preschool~~ early childhood education educators as required by ARM 10.55.714 should be tailored to early childhood development and learning.

(3) Professional development completed by elementary (K-8) educators providing early literacy targeted interventions should be tailored to such interventions. The elementary (K-8) educators providing early literacy targeted interventions, the employing districts, and accredited educator preparation providers, pursuant to ARM 10.58.102, are encouraged to collaborate to develop professional development options that support attainment of qualifications leading to an early childhood education (P-3) endorsement.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

10.63.104 TEACHER ASSIGNMENTS AND QUALIFICATIONS FOR PUBLIC PRESCHOOL AND EARLY LITERACY TARGETED INTERVENTIONS

(1) Teachers shall be assigned at the levels for which they are licensed and endorsed in accordance with state statutes and Board of Public Education rules.

(2) Teachers with an ~~Early Childhood Education Special Permissive Competency~~ early childhood (P-3) endorsement shall be considered to be appropriately licensed, endorsed, and assigned to teach in an accredited preschool program until July 1, 2018, at which time those teachers will need to be appropriately licensed and endorsed pursuant to ARM Title 10, chapter 57.

(3) While teachers with an early childhood (P-3) endorsement are encouraged, teachers with either an early childhood (P-3) endorsement or an elementary (K-8) endorsement shall be considered to be appropriately licensed, endorsed, and assigned to teach early literacy targeted interventions implemented

through the classroom-based program for 4-year-olds and summer jumpstart program preceding kindergarten. Teachers with an elementary (K-8) endorsement who are teaching early literacy targeted interventions implemented through the classroom-based program for 4-year-olds and summer jumpstart program preceding kindergarten are encouraged to pursue professional development as outlined in 10.63.103 to ensure delivery of high-quality early literacy targeted interventions.

~~(3) All other teachers or individuals with background, training, or experience in early childhood that are interested in teaching in a public school preschool program may apply for a Class 5 provisional license pursuant to ARM 10.57.424, if they do not have the proper endorsement.~~

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

10.63.107 CLASS SIZE (1) There must be one appropriately licensed and endorsed teacher for ten students, with an early childhood paraprofessional for any additional students over ten, for up to no more than 18 total students in a classroom with two adults. The school district must assign qualified human resources that comply with all fingerprint and background check requirements when exceeding maximum class sizes at a rate of 1 1/2 hours per day, per student overload. An overload of five students per classroom is considered excessive.

~~(2) Class size of 18 preschoolers is the maximum number of students, regardless of the number of staff.~~

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

10.63.109 ENROLLMENT ELIGIBILITY (1) A child must have reached three years of age before the districts' official start date of the preschool program or have been enrolled by special permission by the board of trustees.

(2) A child who is 4 years of age or older on or before September 10th of the year in which the child is to participate in early literacy targeted interventions implemented through the classroom-based program for 4-year-olds and summer jumpstart program preceding kindergarten and who has not completed kindergarten and who is determined through the evaluation methodology process outlined in [NEW RULE I in Notice No. 10-54-292] to be below a trajectory leading to reading proficiency at the end of third grade is eligible for enrollment in early literacy targeted interventions implemented through the classroom-based program for 4-year-olds and summer jumpstart program preceding kindergarten.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

10.63.110 EARLY LEARNING CONTENT STANDARDS DEVELOPMENTAL DOMAINS AND CONTENT STANDARDS (1) The following early learning developmental domains represent the foundational skills all students need to be successful learners. The development of communication, language, and literacy

skills supports the growth in all other domains of development. All developmental domains are applicable for public preschool programs and early literacy targeted interventions implemented through the classroom-based program for 4-year-olds and summer jumpstart program preceding kindergarten.

(a) The language domain includes communication and comprehension in oral and written language.

(i) Language instruction includes opportunities for students to develop:

(A) receptive language, wherein students use listening and observation skills to make sense of and respond to spoken language and other forms of communication; enter into the exchange of information around what is seen, heard, and experienced; and begin to acquire an understanding of the concepts of language that contribute to learning;

(B) expressive language, wherein students develop skills in using sounds, facial expressions, gestures, and words, such as to help others understand their needs, ask questions, express feelings and ideas, and solve problems;

(C) social language, wherein students develop skills to interact and communicate with others in effective ways; and

(D) support for dual language speakers, wherein students receive support in their home language(s) while becoming proficient in English.

(ii) Literacy instruction includes opportunities for students to develop:

(A) written language, wherein students build an understanding and interest in the symbols, sounds, and rhythms of written language and develop awareness that the printed word can be used for various purposes;

(B) written communication, wherein students develop interest and skill in using symbols as a meaningful form of communication;

(C) print awareness, wherein students build an understanding that print carries a message through symbols and words and that there is a connection between sounds and letters (the alphabetic principle); and

(D) speech development, wherein students develop an awareness of the sounds of letters and the combination of letters that make up words and use this awareness to manipulate syllables and sounds of speech.

~~(4)(b)~~ The emotional and social and emotional domain requires instruction which incorporates and: includes culture, family, community as well as social and emotional development.

~~(a)(i)~~ Culture, family, and community, wherein students learn to develop skills instruction includes opportunities for students to develop:

~~(i)(A)~~ an awareness of and appreciation for similarities and differences between themselves and others;

~~(ii)(B)~~ an awareness of the functions and diverse characteristics of families;
and

~~(iii)(C)~~ an understanding of the basic principles of how communities function, including work roles and commerce.

(ii) Social development skill instruction includes opportunities for students to:

(A) develop trust, emotional bonds, and interact comfortably with adults;

(B) interact and build relationships with peers; and

(C) develop skills in cooperation, negotiation, and empathy.

~~(b)(iii) Emotional development wherein students skills instruction includes opportunities for students to:~~

~~(i)(A) develop an awareness and appreciation of self as a unique, competent, and capable individual;~~

~~(ii)(B) demonstrate a belief in their abilities;~~

~~(iii)(C) manage internal states, feelings, and behavior, and develop the ability to adapt to diverse situations and environments; and~~

~~(iv)(D) express a wide and varied range of feelings through facial expressions, gestures, behaviors, and words.~~

~~(c) social development which helps students:~~

~~(i) develop trust, emotional bonds, and interact comfortably with adults;~~

~~(ii) interact and build relationships with peers; and~~

~~(iii) develop skills in cooperation, negotiation, and empathy.~~

~~(2)(c) The physical domain requires includes development of motor skills and instruction in health, safety, and personal care.~~

~~(a)(i) Development of Motor skills instruction includes opportunities for students to develop:~~

~~(i)(A) small muscle strength, coordination, and skills;~~

~~(ii)(B) large muscle strength, coordination, and skills; and~~

~~(iii)(C) use of their senses to explore the environment and develop skills through sight, smell, touch, taste, and sound.~~

~~(b)(ii) Health, safety, and personal care standards for early childhood education are that students skills instruction includes opportunities for students to develop:~~

~~(i)(A) develop personal health and hygiene skills as they develop and practice self-care routines;~~

~~(ii)(B) eat a variety of nutritional foods and develop healthy eating practices by eating a variety of nutritional foods;~~

~~(iii)(C) develop healthy behaviors through physical activity; and~~

~~(iv)(D) develop an awareness and understanding of safety rules as they learn to make safe and appropriate choices.~~

~~(3) The communication domain includes communication, language, and literacy development.~~

~~(a) Standards for early childhood communication and language include:~~

~~(i) receptive communication, wherein students use listening and observation skills to make sense of and respond to spoken language and other forms of communication; enter into the exchange of information around what is seen, heard, and experienced; and begin to acquire an understanding of the concepts of language that contribute to learning;~~

~~(ii) expressive communication, wherein students develop skills in using sounds, facial expressions, gestures, and words, such as to help others understand their needs, ask questions, express feelings and ideas, and solve problems;~~

~~(iii) social communication wherein students develop skills to interact and communicate with others in effective ways; and~~

~~(iv) for dual language speakers, students receive support in their home language(s) while becoming proficient in English.~~

~~(b) Literacy standards for early childhood education are that students develop:~~

~~(i) an understanding, skills, and interest in the symbols, sounds, and rhythms of written language and develop awareness that the printed word can be used for various purposes;~~

~~(ii) interest and skills in using symbols as a meaningful form of communication;~~

~~(iii) an understanding that print carries a message through symbols and words and that there is a connection between sounds and letters (the alphabetic principle); and~~

~~(iv) an awareness of the sounds of letters and the combination of letters that make up words and use this awareness to manipulate syllables and sounds of speech.~~

~~(4)(d) The cognitive domain requires instruction which incorporates and includes: approaches to learning.~~

~~(a)(i) Approaches to learning which help students skills instruction include opportunities for students to develop:~~

~~(i)(A) curiosity through imagination, inventiveness, originality, and interest as they explore and experience new things;~~

~~(ii)(B) initiative and self-direction through engagement in new tasks and to take risks in learning new skills or information;~~

~~(iii)(C) persistence and attentiveness with the ability to focus their attention and concentration to complete tasks and increase their learning; and~~

~~(iv)(D) reflection and interpretation skills in thinking about their learning in order to inform their future decisions; and~~

~~(b)(E) development of reasoning and representational thought skills in causation, critical and analytical thinking, problem solving, and representational thought;~~

~~(2) The following early learning content standards are aligned to the Montana K-12 Content Standards and highlight what students should know, understand, and be able to do upon entering kindergarten. All early learning content standards are applicable for public preschool programs while only the English Language Arts and Literacy Content Standards apply to early literacy targeted interventions implemented through the classroom-based program for 4-year-olds and summer jumpstart program preceding kindergarten.~~

~~(a) English Language Arts and Literacy standards include:~~

~~(i) early reading, wherein students develop an understanding, skill, and interest in alphabet knowledge using the symbols, sounds, and rhythms of written language;~~

~~(ii) print development and writing, wherein students demonstrate interest and skill in using symbols as a meaningful form of communication;~~

~~(iii) speaking and listening, wherein students use phonemic and phonological awareness to identify and play with individual sounds in spoken words; and~~

~~(iv) language, wherein students develop the ability to communicate with others to build relationships, share meaning, and express needs.~~

~~(c)(b) instruction in Creative arts, including standards include:~~

(i) creative movement, wherein students produce rhythmic movements spontaneously and in imitation with growing technical and artistic abilities;

(ii) drama, wherein students show appreciation and awareness of drama through observation, imitation, and participation in simple dramatic plots;

(iii) music, wherein students engage in a variety of musical or rhythmic activities; and

(iv) visual arts, wherein students demonstrate a growing understanding and appreciation for the creative process and visual arts.

~~(d)(c)~~ Mathematics and numeracy standards for early childhood education are that students include:

(i) ~~develop~~ number sense and operations through, wherein students develop the ability to think and work with numbers, to understand their uses, and describe their relationships through structured and everyday experiences;

(ii) ~~develop an awareness of~~ measurement concepts through, wherein students use of measurement instruments to explore and discover measurement relationships and characteristics, such as length, quantity, volume, distance, weight, area, and time;

(iii) ~~apply~~ mathematical skills in data analysis, such as wherein students counting count, sorting sort, and comparing compare objects;

(iv) ~~develop an awareness of~~ initial algebraic thinking and operations through counting, sorting, and comparing objects, wherein students identify, describe, produce, and create patterns using mathematical language and materials; and

(v) ~~build the foundation for~~ geometric and spatial reasoning, wherein students build the foundation for through recognition recognizing, creation creating, and manipulation manipulating of shapes, and learning spatial reasoning and directional words as they become aware of their bodies and personal space in their physical environment.

~~(e)(d)~~ Science standards for early childhood education are that students include:

(i) ~~engage in~~ scientific thinking and the use of the scientific methods through investigation using their senses to observe, manipulate objects, ask questions, make predictions, and develop conclusions and generalizations;

(ii) ~~develop~~ an understanding of and compassion for living things;

(iii) ~~develop~~ an understanding of the physical world, the nature and properties of energy, and nonliving matter;

(iv) ~~develop~~ an understanding of the earth and planets; and

(v) ~~develop~~ an understanding of engineering as the process that assists people in designing and building.

~~(f)(e)~~ Social studies standards for early childhood education are that students include:

(i) ~~develop~~ an understanding of the concept of historical time, including past, present, and future;

(ii) ~~develop~~ knowledge of geographical places and regions by understanding that each place has its own unique characteristics and the reciprocal effect individuals have with the world around them; and

(iii) ~~become aware~~ awareness of their natural world, including the environment and our interdependence on the natural world; ~~and~~

(f) Technology standards include:

~~(iv)~~(i) develop an understanding of technology with awareness of technological tools and developmentally appropriate exploration of the ways to use these resources.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

10.63.111 CURRICULUM AND ASSESSMENT (1) The early childhood curriculum, as defined in ARM 10.63.102, shall:

(a) contain a written philosophy and framework, grounded in research-based understandings of child development, to provide a clear, coherent focus for planning students' experiences;

(b) informing instruction through observation and documentation of children's strengths, interests, and needs in their play, work, and behavior;

(c) guide the learning process and daily plans for learning through the selection of materials and equipment to enhance development and learning in ~~each core domain~~ the early learning developmental domains, including ~~emotional/social and emotional~~, physical, ~~communication~~ language, and cognition; and encourage integration of applicable early childhood learning content areas, including ~~social, emotional, physical, health, safety, language~~, literacy, mathematics, science, social studies, creative expression and the arts, and technology;

(d) include planned opportunities for active exploration, discovery, and social interaction;

(e) plan for students' engagement in play each day; and

(f) be implemented in a manner reflective of students' family and community lives while being responsive to diversity, including gender, age, language, culture, and ability, including opportunities for students and families to learn about the distinct and unique heritage of American Indians, particularly Montana Indian tribes, in a culturally responsive manner (20-1-501, MCA).

(2) School districts shall ~~develop preschool~~ early childhood education programs to include an ongoing and systematic written assessment plan which includes protocols for:

(a) monitoring the progress of students toward achieving content standards and learning in the developmental domains using formative and summative approaches that include universal screening, progress monitoring, and diagnostic assessments;

(b) administration of assessments and interpretation of assessment results;

(c) providing disaggregated data to educators and teams to inform instructional planning and decision making;

(d) involving families as partners in linguistically and culturally responsive ways to inform decisions about students' needs; and

(e) assessing the effectiveness of the instructional program that guides adjustments for improvement.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

10.63.112 INSTRUCTION (1) The ~~preschool~~ early childhood education program shall ensure developmentally, culturally, and linguistically appropriate and effective teaching strategies that enhance students' development and learning of the early learning content standards in ARM 10.63.110 through the program's curriculum.

(2) The ~~preschool~~ early childhood education instructional program shall:

(a) use both content and child development knowledge to create learning opportunities and to engage young learners in meaningful, planned, and purposeful experiences related to the curriculum goals and content standards;

(b) use a variety of effective approaches and strategies which include opportunities for both teacher and student-initiated interactions and activities;

(c) support children's development by providing opportunities for all children to play with and learn from each other;

(d) use knowledge of each student's development to enhance instruction, modify strategies and materials, and adjust supports and challenges as students gain competence, understanding, and skills;

(e) build upon student's language, understanding of concepts, and increase vocabulary;

(f) integrate knowledge of students' families and the community to build relationships that foster integral connections with the curriculum and learning experiences;

(g) use cultural and community resources in the classroom to enhance student learning and development; and

(h) work as a team to implement learning plans, including plans for students with special needs.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

10.63.113 PHYSICAL AND LEARNING ENVIRONMENTS (1) The ~~preschool~~ early childhood education program shall ensure an appropriate and well-maintained safe and healthful physical environment that:

(a) is designed to protect student health and safety;

(b) allows for supervision of students primarily by sight;

(c) provides sanitization according to state and federal health standards;

(d) follows state and federal guidelines for meals and snacks; and

(e) provides safe, supervised, and adequate outside play space with age-appropriate equipment and safe, adequate indoor space for each child.

(2) The ~~preschool~~ early childhood education program shall ensure a safe and healthful learning environment by:

(a) providing a written predictable but flexible schedule that provides intentionally planned routines and transitions; and

(b) providing daily indoor and outdoor activities, including:

(i) planned learning center time where students have individual choice of activities;

- (ii) daily opportunities to learn and play individually, in small groups, and as a whole group; and
- (iii) use of developmentally appropriate materials and equipment.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

10.63.114 CHILD GUIDANCE (1) Child guidance means employing a variety of strategies to foster self-regulation, respect for others, problem solving, and ~~emotional and social~~ and emotional development in an ongoing interactive process and helps students learn how to communicate with others in developmentally appropriate ways. To ensure appropriate child guidance, the ~~preschool~~ early childhood education program shall:

- (a) use positive behavior supports to ensure the social, emotional, and cultural development of each student;
- (b) provide a positive climate to ensure equality, inclusion, and citizenship;
- (c) develop relationships with the student and the student's family in ways that are linguistically and culturally sensitive;
- (d) provide opportunities for students to be contributing members of the classroom community;
- (e) provide clear behavioral expectations, including the use of effective methods to prevent and redirect misbehavior; and
- (f) partner with families and other professionals for students with challenging behavior to develop and implement an individualized plan that fosters the child's inclusion and success.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

10.63.115 FAMILY AND COMMUNITY ENGAGEMENT (1) The program staff shall establish and maintain collaborative relationships with each child's family and community to foster student's development in all settings.

(2) To ensure collaborative relationships between the community, school, and families, ~~preschool~~ early childhood education programs shall have protocols which:

- (a) establish intentional practices designed to foster strong reciprocal relationships with families;
- (b) ensure that families are an integral part of the decision-making team through communication and family conferences which promote dialogue and partnership regarding their student's educational goals and services;
- (c) collaborate with families to help students participate successfully in early childhood settings;
- (d) ensure that all families, regardless of family structure, socioeconomic, racial, religious, and cultural diversity, gender, abilities, or preferred languages are included in their child's educational experience;
- (e) assist families in locating, contacting, and using community resources that support the student's well-being, development, and goals;

(f) promote awareness and understanding of the unique legal and political structures of Montana Tribal Nations in order to best meet the needs of Indian students and families;

(g) collaborate with community-based programs to ensure that parents and families have the resources they need to be involved in their student's education, growth, and development; and

(h) provide access to health screenings and referrals for all students in the program.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

4. The rule proposed to be repealed is as follows:

10.63.108 AGGREGATE HOURS

AUTH: 20-7-101, MCA

IMP: 20-7-117, MCA

REASON: The board proposes the amendment and repeal of the existing rules in ARM Title 10, chapter 63, Early Childhood Education Standards to comply with HB 352 (2023). The Early Literacy Advisory Council, created by the board, recommended the proposed revisions to address the purposes of the legislation to provide parents with voluntary early literacy interventions for their children, increase the number of children who are reading proficient at the end of third grade, and foster a strong economic return for the state on early literacy investments. Additionally, the council aligned the revised standards with the language in 20-7-1803(5)(b), MCA, that states, "The classroom-based program must align with developmentally appropriate early childhood education learning standards as determined by the board of public education...". Subchapter 1 will be renamed "Early Childhood Education Standards."

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: McCall Flynn, Executive Director, Board of Public Education, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59620; telephone (406) 444-0300; or e-mail bpe@mt.gov, and must be received no later than 5:00 p.m., March 8, 2024.

6. McCall Flynn, executive director, Board of Public Education, has been designated to preside over and conduct this hearing.

7. The board 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. Written requests 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 agency.

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 have been fulfilled. The primary bill sponsor was contacted by email on January 8, 2024.

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

/s/ McCall Flynn
McCall Flynn
Executive Director
Board of Public Education

/s/ Tim Tharp
Tim Tharp
Chair
Board of Public Education

Certified to the Secretary of State January 30, 2024.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 10.102.1158, 10.102.4002,	)	AMENDMENT
10.102.9102, and 10.102.9105)	
pertaining to updating rules to comply	)	NO PUBLIC HEARING
with legislation	)	CONTEMPLATED

TO: All Concerned Persons

1. The Montana State Library proposes to amend the above-stated rules.

2. The Montana State Library 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 Montana State Library no later than 5:00 p.m. on February 26, 2024, to advise us of the nature of the accommodation that you need. Please contact Genevieve Lighthiser, Montana State Library, 1201 11th Avenue, Helena, Montana 59620; telephone (406) 444-3384; fax (406) 444-0266; TTY/TDD: (406) 444-4799; or email glighthiser@mt.gov.

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

10.102.1158 LIBRARY BOARD, GOVERNANCE, AND WORKING WITH THE DIRECTOR (1) The A public library is defined at 22-1-301(3), MCA, established in per Title 7, MCA, ~~Title 22, MCA, or through the legal process practiced by or~~ an accredited tribal college library that provides service to the public. All libraries must comply with the standards set forth in ARM Title 10, chapter 102, subchapter 11.

(2) The public library board shall meets at least six times a year and ~~complies shall comply~~ with Montana's open meeting laws ~~when meeting~~.

(3) The public library board members shall learn about the services the library provides to users, the role of the board in providing administrative and financial oversight, and the role of the board in planning for new services for users.

(4) The public library board shall receives at least three hours of continuing education each year.

(5) The public library board shall understands the revenue sources that fund the library, the budgeting process, and shall ~~adopts a~~ an annual budget for the library.

(6) For a public library defined at 22-1-301(3), MCA, and created under Title 7 ~~or Title 22, MCA,~~ at least 70% of the revenue is shall be derived from local tax revenues. Grants, donations, and other revenue sources supplement but do not supplant local tax support. For an accredited tribal college library that serves ~~if a tribal college library serves~~ tribal members, the tribal council shall recognizes and supports the efforts of the library to obtain funding.

(7) Public library boards and directors ~~will~~ shall identify the requisite financial resources necessary to provide adequate library services pursuant to the library's mission and ~~will~~ shall regularly communicate with community and local government leaders about financial needs and ability to meet community needs.

(8) The public library board, ~~in consultation with and the~~ director, shall identify in writing what they want to accomplish in the next three to five years, and that plan ~~is~~ shall be focused on meeting community needs. The board and director shall annually review their plan and progress made.

(9) The public library board shall adopts emergency response plans that ensure the safety of the public and staff as the primary priority.

(10) The public library director or designee shall submits the Montana Public Library Annual Statistical Report to the Montana State Library. The public library board and director shall annually review public library statistics.

(11) The public library board shall adopts and regularly reviews policies that reflect the mission, objectives, and goals of the public library. The policies shall govern use of the public library, its materials, and services. No single policy may exist ~~goes~~ more than four years without review.

(12) The public library board and director shall review ~~be familiar with~~ the most current Public Library Standards Road Map maintained by the Montana State Library.

AUTH: 22-1-103, MCA

IMP: 22-1-103, MCA

REASON: These rule amendments are proposed to update language to reflect changes to 22-1-327, MCA, in the 2023 Legislative Session.

10.102.4002 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) through (5) remain the same.

(6) "Public library" ~~is defined at 22-1-301(3), MCA, established in Title 7, MCA, means those libraries as defined in 22-1-303 through 22-1-317, MCA, 22-1-701 through 22-1-716, MCA,~~ or an accredited tribal college library that provides services to the public. All libraries must comply with the standards set forth in ARM Title 10, chapter 102, subchapter 11 ~~ARM 10.102.1158 through 10.102.1162.~~

(7) remains the same.

AUTH: 22-1-103, MCA

IMP: 22-1-103, MCA

REASON: These rule amendments are proposed to update language to reflect changes to 22-1-327, MCA, in the 2023 Legislative Session.

10.102.9102 DEFINITIONS In addition to the definitions found in 90-1-403, MCA, the following definitions apply:

(1) through (3) remain the same.

(4) "State agency" means any entity of the executive branch, legislative branch, or judicial branch, including, without limitation, the university, ~~system as defined in 2-15-102, MCA.~~

(5) and (6) remain the same.

AUTH: 90-1-413, MCA

IMP: 90-1-404, MCA

REASON: The proposed amendment updates language to reflect changes to 22-1-327, MCA, in the 2023 Legislative Session

10.102.9105 ESTABLISHING THE GRANT APPLICATION AND GRANTING PROCESS (1) remains the same.

(2) Grant applications received by the State Library that comply with applicable grant procedures will be considered for funding.

(3) and (4) remain the same.

AUTH: 90-1-413, MCA

IMP: 90-1-404, MCA

REASON: The revised rule will allow for a biennial grant application period rather than requiring grants to be awarded annually. This change is more efficient for staff and applicants. By reducing the work required to administer a grant application process, the proposed change eliminates the work required to administer grant extensions to grantees who typically require two years to complete grants.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Genevieve Lighthiser, Montana State Library, 1201 11th Avenue, Helena, Montana 59620; telephone (406) 444-3384; fax (406) 444-0266; TTY/TDD: (406) 444-4799; or email glighthiser@mt.gov, and must be received no later than 5:00 p.m., March 8, 2024.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Genevieve Lighthiser at the above address no later than 5:00 p.m., March 8, 2024.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25 members, 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 53 persons based on the staff and board members of affected libraries.

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. Written requests may be made to the contact person in paragraph 4 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 have been fulfilled. The primary bill sponsor was contacted by email by Jennie Stapp, State Librarian, on October 4, 2023.

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/ Jennie Stapp
Jennie Stapp
Rule Reviewer

/s/ Robyn Scribner
Robyn Scribner
Commission Chair
Montana State Library

Certified to the Secretary of State January 30, 2024.

BEFORE THE UNEMPLOYMENT INSURANCE APPEALS BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.7.101, 24.7.303, 24.7.304,)
24.7.305, 24.7.306, and 24.7.308 and)
the repeal of ARM 24.7.312 pertaining)
to the Unemployment Insurance)
Appeals Board)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On February 29, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/89619718017>
Meeting ID: 896 1971 8017, Passcode: 809471
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 896 1971 8017, Passcode: 809471

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on February 22, 2024, 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.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: These rules were generally amended to change language from passive to active voice, to use similar terminology throughout the rules, to provide clarity and simplification of language, and to identify persons responsible for specific actions allowed by these rules. Specific statements will follow when needed.

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

24.7.101 ORGANIZATION AND PUBLIC PARTICIPATION OF UNEMPLOYMENT INSURANCE APPEALS BOARD (1) The Unemployment Insurance Appeals Board of the Department of Labor and Industry ~~herein~~ adopts and incorporates the organizational structure of the Unemployment Insurance Appeals Board as it has been set out and explained in chapter 1 of this title. (2) remains the same.

AUTH: 2-3-103, 2-4-201, MCA
IMP: 2-3-103, 2-4-201, MCA

24.7.303 DEFINITIONS (1) The board incorporates by reference and adopts all applicable definitions set forth in ARM Title 24, chapter 11 and Title 39, chapter 51, MCA, unless context or a particular rule provides clearly indicates otherwise.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2404, MCA

24.7.304 FILINGS WITH THE BOARD (1) ~~Any document required by or permitted to be filed with the board may be filed in hard copy, by e-mail, or by telephonic facsimile (fax), and addressed to the board as follows~~ If an interested party is required, or permitted, to file documents, the interested party must file the documents with the board using one of the following methods and addressing the documents to the board:

~~(a) hard copy mail filings may be mailed to P.O. Box 8020, Helena, MT 59624-8020 or hand delivered to 1315 Lockett Ave, Helena, MT 59601;~~
~~(b) fax filings may be transmitted to (406) 444-2699. Documents which are longer than twenty pages, inclusive of attachments and exhibits, may not be filed by fax;~~

(b) hand deliver filings to 1315 Lockett Avenue, Helena, MT 59601;
(c) e-mail filings may be transmitted to uiappealsboard@mt.gov; or
(d) any other method permitted by the department.

~~(2) A document is filed, no matter how it is transmitted, on the date it is received by the board, not the date it is transmitted on the date the board receives it. It is the responsibility of the filing party filing party's responsibility to ensure that the board receives all documents are received timely by the board.~~

(3) An interested party may submit written argument for the board's consideration. The interested party must file the written argument with the board no later than five business days from the date of the scheduled review proceeding.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: Reasonable necessity exists to remove the option for the public to fax file documents and provide the option to upload documents to their eServices account via MUSE Montana Unemployment Services Environment (MUSE) because with the department's adoption of the MUSE system and end of the Electronic Content Manager/Perceptive (ECM) system, the department can no longer receive documents by fax but can do so through uploads to MUSE. Reasonable necessity exists to clarify that parties may submit written argument if they will not be present at the review proceeding and to include it with filings, rather than ARM 24.7.312, where it was formerly located, because argument is not considered new evidence.

24.7.305 BOARD REVIEW PROCEDURE (1) ~~The board review on an appeal of an appeals referee's decision shall be conducted informally, and in such manner as to ascertain the substantial rights of the parties. Review is initiated by filing a notice of appeal with the board.~~

~~(a) A notice of appeal should set forth all errors of the appeals referee's decision.~~

~~(b) All issues relevant to an appeal shall be considered and passed upon by the board.~~

(2)(1) After receiving a notice of appeal, the board will issue written notice of the date, time, and place of the board review. The notice will be mailed sent to the all interested parties at least ten days prior to the board's review by regular mail. Interested parties are responsible for giving the board the party's current contact information.

~~(3) An interested party to an appeal before the board may appear at any proceeding held in such appeal, either on the party's own behalf, by an attorney at law, or through an authorized lay representative. Lay representatives may not be paid for the representation unless they are employed by the claimant's labor union, are an employee of the employer or third party administrator for an employer or group of employers receiving regular wages for the representation, or in the interest of justice at the board's sole discretion.~~

(2) The board will conduct its review proceeding informally and may choose to hold a review in person or remotely at its discretion. The board will consider and decide all issues relevant to an appeal when consideration does not conflict with other rules in ARM Title 24, chapter 7.

(3) Either party to the appeal before the board may appear at any board proceeding on the party's own behalf or may be represented by an attorney or through an authorized lay representative. Lay representatives may not be paid for representation unless:

(a) the lay representative is employed by the claimant's labor union;

(b) the lay representative is an employee of the employer;

(c) the lay representative is a third-party administrator for an employer or group of employers receiving regular wages for the representation; or

(d) it is in the interest of justice at the board's sole discretion.

~~(4) At the scheduled date and time of the board proceeding, the board will make two attempts to reach each interested party at the telephone number(s) provided. If the board is unable to reach a party and/or the party fails to appear or make a request to continue, the board will make a determination pursuant to proceed with the review and make its determination under ARM 24.7.306.~~

~~(5) At any time prior to the issuance of the board's decision, the board may at its discretion continue a proceeding in order to secure evidence or argument that is necessary and to be fair to the parties, but in no case may the board's review be continued without board action for more than 60 days beyond the date originally set for the board proceeding. In the event that a scheduled board proceeding is continued, the board review shall be rescheduled with due notice to all interested parties.~~

(5) If an interested party notifies the board that the party will be unable to attend the scheduled review, and asks to continue the review, the board or board

chair may continue the hearing if continuance is either fair to the parties or it allows a party to provide necessary evidence or argument to the board.

(6) If the board chair reschedules a review, such review must occur no later than 60 days from the date of the originally scheduled review. Notice of this review must follow the requirements of (1).

(7) If the board finds that it needs more evidence to make its decision, it may remand the case to the appeals referee. The board must promptly notify the interested parties of such action.

(8) The rules of evidence and civil procedure are not binding in board administrative proceedings for unemployment insurance matters.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: Reasonable necessity exists to remove how board review is initiated as statute already indicates a decision by an appeals referee (hearing officer) is final unless appealed to the board. Reasonable necessity also exists to clarify who has the authority to choose the review setting because there was previously confusion whether an interested party could request and/or require the board to meet in person. Due to the availability of technology, and to reduce department costs, board member travel time, and health and safety risk to board members and the public, the department grants the board the authority to determine the setting. Reasonable necessity also exists to move procedural requirements of remand out of ARM 24.7.306 which focuses on how the board makes decisions and not the procedures which occur when a decision is made. Reasonable necessity exists to move the relevant portions of ARM 24.7.312 to this rule, to consolidate board review procedures.

24.7.306 DETERMINATION OF APPEALS (1) ~~The department shall transmit to the board all records that are pertinent to the appeal, including documents not admitted into the record by the appeals referee. The board will consider, as it deems appropriate, such records or portions of those records as the board deems appropriate which the department transmitted on appeal as required under 39-51-2404, MCA. As soon as possible after the hearing, the board will decide whether to reverse, modify, or affirm the decision of the appeals referee. Written notice of the board's action will be sent to all interested parties. The board will also consider interested parties' timely filed written arguments and any oral arguments of the parties which appear before the board at the time of the review proceeding.~~

(2) The board will review the appeals referee's decision for errors of law or fact and will determine whether the appeals referee's decision was based upon substantial evidence. ~~In making its determination, the board will consider the record transmitted on appeal, written or oral arguments, as well as any new material admitted pursuant to ARM 24.7.312.~~

(3) The board will only consider new evidence to determine whether an interested party timely filed an appeal to the board. A party must submit new evidence by both filing it with the board and sending a copy to all interested parties

no later than five business days before the scheduled review proceeding. The evidence must be the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(4) As soon as possible after the hearing, the board will decide whether to remand, reverse, modify, or affirm the decision of the appeals referee. Written notice of the board's action will be mailed to all interested parties.

~~(3)(5)~~ If a party fails to appear at the board proceeding and ~~no~~ that party does not show good cause for continuance is shown, the board shall render must make its decision ~~on the basis of~~ based on the record, written argument submitted, and argument of parties in attendance.

~~(4)(6)~~ Inability of the board to achieve a favorable vote regarding an appeal will results in affirming the decision of the appeals referee.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-310, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: Reasonable necessity exists to remove the department's requirement to submit records because that is already a statutory requirement in 39-51-2404, MCA. Reasonable necessity also exists to clarify the board's standard of review of an appeals referee's decision, explain the board's limitations and procedures if a case is time-barred for untimely appeals, and grant the board authority to remand cases when necessary. This allows board members and the public to understand the board's authorities and limitations in review proceedings. Reasonable necessity exists to move the relevant portions of ARM 24.7.312 to this rule, to consolidate board determinations.

24.7.308 BOARD MEMBER DISQUALIFICATIONS ~~(1) No member of the board shall participate in the review proceeding of any appeal in which the member has an interest nor shall any such member appeal in which the member has an interest nor shall any such member represent any interested party or witness at any board proceeding.~~

(1) Either a board member or an interested party may seek to disqualify a board member from reviewing an appeal proceeding.

(2) A board member must be disqualified from the review of an appeal proceeding if:

(a) that member's private interest would conflict with their public duty;

(b) it is an appeal of that member's unemployment insurance matter; or

(c) that member represents any interested party or witness at that board proceeding.

~~(2)(3) Any interested party may challenge any member of the board in writing by filing with the board a motion, supported by affidavit, made in good faith, of personal bias, lack of independence, disqualification by law, or other ground of disqualification allowed by law. The motion must be filed five days prior to any related scheduled board action. Following the filing of such motion and a reasonable period of time for an opposing party to comment upon it, the board shall either enter an order of recusal or decline the member's disqualification seeking to disqualify a board member from reviewing an appeal proceeding must, within five~~

business days, file a written motion made in good faith, along with a supporting affidavit. The motion must include the reason the filing party believes the member should be disqualified and any evidence to support the included reasons.

(a) The interested party seeking disqualification must send the motion and affidavit to all other interested parties' address(es) of record at least five business days before any related scheduled board proceeding.

(b) If the interested party seeking disqualification fails to follow the requirements of this rule, the board will dismiss the motion.

(c) If the interested party not seeking disqualification does not file a response to the motion and send it to both the board and the other party at least two calendar days before the scheduled proceeding, the party not seeking disqualification waives the opportunity to provide a response.

(d) When the board receives the filed motion, supporting affidavit, and any written response, it will consider the motion to challenge a board member at the scheduled board proceeding and either enter an order of recusal or decline the member's disqualification.

(e) Filings under this rule must comply with ARM 24.7.304.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 2-15-1704, MCA

REASON: Reasonable necessity exists to provide clear reasons a board member must or may be disqualified and to provide the public with procedures to follow when seeking board member disqualification.

5. The rule proposed to be repealed is as follows:

24.7.312 NEW MATERIAL BEFORE THE BOARD

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-2404, 39-51-2407, MCA

REASON: Reasonable necessity exists to remove the board's authority to consider evidence which was not before the appeals referee because the board is tasked with reviewing the appeals referee's decision, not reweighing evidence or considering new evidence which the appeals referee did not have. This aligns the board's review authority with other appellate judiciary and/or quasi-judiciary bodies. Reasonable necessity also exists to move the procedure for board remand to the rule outlining the majority of board procedures for organizational flow.

6. 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., March 8, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

UNEMPLOYMENT INSURANCE APPEALS
BOARD, LAURA FIX, CHAIR

/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 January 30, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.22.701, 24.22.704,)
24.22.707, and 24.22.713 and the)
repeal of ARM 24.22.710 pertaining to)
work-based learning grants)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On March 1, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/82948472300>
Meeting ID: 829 4847 2300, Passcode: 539197
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 829 4847 2300, Passcode: 539197

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on February 23, 2024, 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.

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

24.22.701 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

~~(1) "Declaration" means a sworn statement by the employer on the application for reimbursement that the requested reimbursement is only for the workers' compensation premiums paid for a student employed in a qualified high-quality work-based learning opportunity.~~

~~(2) "Department" means the Department of Labor and Industry.~~

~~(3) "Employer" means a profit or non-profit business entity that hires a student pursuant to a learning partnership agreement.~~

~~(4)~~(1) "Employment" means a student's term-limited, paid, on-the-job instruction work in a high-quality work-based learning opportunity pursuant to a learning partnership agreement for academic credit.

~~(5)~~(2) "Enrolled" means a student is participating in or has successfully completed a qualified high-quality work-based learning opportunity.

~~(6) "Learning partnership agreement" means an agreement setting forth expectations and commitments for the student's employment in a high-quality work-based learning opportunity. Each agreement must include:~~

~~(a) a description of classroom and on-the-job instruction, including two hours of safety instruction;~~

~~(b) the days and hours of employment;~~

~~(c) the wage that the student will be paid;~~

~~(d) the criteria for determining how the high-quality work-based learning opportunity and the student's skill development will be evaluated;~~

~~(e) the criteria for earning academic credit;~~

~~(f) the number of credits to be earned; and~~

~~(g) signatures by the school or other educational provider, the employer, the participating student, and the student's parents if the student is a minor.~~

~~(7) "Notice of eligibility" means an e-mail sent to the employer by the department after the school, or other educational provider, completes registration at the end of a semester. The notice of eligibility notifies the employer that they can submit an application for reimbursement. The notice of eligibility is not a guarantee of reimbursement.~~

~~(8) "Portal" means a department-created online database for a school, or other educational provider, to register information relating to high-quality work-based learning programs and for employers to apply for reimbursement of workers' compensation premiums paid on behalf of a student.~~

~~(9) "Qualified high-quality work-based learning opportunity" means a successfully completed high-quality work-based learning opportunity. The school's registration of the employer in the department's portal confers qualification on the high-quality work-based learning opportunity.~~

~~(10) and (11) remain the same but are renumbered (3) and (4).~~

~~(12)(5) "Student" means an individual enrolled in a high-quality work-based learning opportunity through a public or private secondary school, multidistrict cooperative, home school providing secondary instruction, or equivalent educational provider.~~

~~(13)(6) "Term-limited educational program" means a semester-long high-quality work-based learning opportunity established for a specified time.~~

~~(14) remains the same but is renumbered (7).~~

AUTH: 39-71-319, MCA

IMP: 39-71-319, MCA

REASON: Reasonable necessity exists to strike the definition of "declaration" because the term is used in its regular, legal meaning and need not be further defined. The definitions of "department" and "employer" are proposed to be removed because those terms are defined in the Workers' Compensation Act, and clarified at 39-71-319, MCA, and need not be further defined in rule. The definition of "learning partnership agreement" is proposed to be repealed in favor of clarity in ARM 24.22.713.

"Notice of eligibility" and "portal" are proposed to be removed because, through this rulemaking, the department seeks to reduce red tape associated with the program and to reduce barriers for application. As a result, the need for school registration of work opportunities is proposed to be eliminated. Instead, employers will be required to submit an application containing all necessary information. The specificity as to a "qualified" high-quality work-based learning opportunity is proposed to be incorporated into ARM 24.22.704.

The definition of "student" is proposed to be amended to clarify that employers of public, private, and home school students may qualify for this program.

24.22.704 ATTRIBUTES OF A HIGH-QUALITY WORK-BASED LEARNING OPPORTUNITY (1) A high-quality work-based learning opportunity features a partnership between employers and schools or other educational providers to provide students with structured learning both in the classroom and at the employer's job site. It must include the following:

(a) ~~learning partnership agreement~~ an agreement satisfying 20-7-307(1), MCA;

(b) through (e) remain the same.

(2) A high-quality work-based learning opportunity is qualified upon completion, whether the term-limited educational program has concluded or not.

AUTH: 39-71-319, MCA

IMP: 39-71-319, MCA

REASON: Reference to a learning partnership agreement is stricken in favor of a cross reference to the written agreement of 20-7-307(1), MCA, which is proposed to reduce the administrative burden of establishing a work-based learning opportunity. Reasonable necessity exists to include (2) to simplify the definitions rule and to put all attributes of a high-quality work-based learning opportunity into a single rule for ease of reader use.

24.22.707 GENERAL PROVISIONS RELATING TO REIMBURSEMENT

(1) remains the same.

(2) Reimbursement is limited to the employer's workers' compensation premiums for a student's ~~completion of a~~ qualified high-quality work-based learning opportunity. ~~If the employer does not receive a notice of eligibility from the department, an employer is not eligible to apply for reimbursement.~~

(3) remains the same.

AUTH: 39-71-319, MCA

IMP: 39-71-319, MCA

REASON: Reasonable necessity exists to strike a portion of (2) because the requirement for a school to register a program is being eliminated. As a result, the department will not be able to provide additional notice of the program to an employer based on registration.

24.22.713 REIMBURSEMENT APPLICATION PROCESS ~~(1)~~ After the school registers an employer in the department's portal, the department will send a notice of eligibility to each registered employer.

~~(2)~~(1) Within 45 days of the date of the department's notice of eligibility qualification of the high-quality work-based learning opportunity, the employer shall complete an application electronically through the department's portal and provide all required documents. The application must include:

(a) remains the same.

(b) a fully executed copy of the agreement satisfying 20-7-307(1), MCA;

(b) through (g) remain the same but are renumbered (c) through (h).

(3) and (4) remain the same but are renumbered (2) and (3).

AUTH: 39-71-319, MCA

IMP: 39-71-319, MCA

REASON: There is reasonable necessity to amend this rule to remove references to school registration of programs.

4. The following rule is proposed to be repealed:

24.22.710 REGISTRATION

AUTH: 39-71-319, MCA

IMP: 39-71-319, MCA

REASON: There is reasonable necessity to repeal this rule to reduce red tape associated with this program. By repealing this rule, employers may directly apply for reimbursement without the need for a school registration.

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., March 8, 2024.

6. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

9. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

10. Department staff has been designated to preside over and conduct this hearing.

/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 January 30, 2024.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 37.51.102, 37.51.202,	)	PROPOSED AMENDMENT
37.51.203, 37.51.207, 37.51.209,)	
37.51.210, 37.51.216, 37.51.217,)	
37.51.301, 37.51.305, 37.51.310,)	
37.51.311, 37.51.602, 37.51.603,)	
37.51.608, 37.51.801, 37.51.802,)	
37.51.810, 37.51.816, 37.51.820,)	
37.51.825, 37.51.901, 37.51.902,)	
37.51.1001, 37.51.1404, and)	
37.51.1410 pertaining to foster care)	
licensing)	

TO: All Concerned Persons

1. On March 1, 2024, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/89352080027?pwd=L1NVbEJhMnYwamU5cHIhNFZkR25JZz09>, meeting ID: 893 5208 0027, and password: 157497; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 893 5208 0027, and password: 157497. Find your local number: <https://mt-gov.zoom.us/u/k1fwdGdYa>.

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 February 16, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhus, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

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

37.51.102 YOUTH FOSTER HOMES: DEFINITIONS The following definitions apply to youth foster home licensing rules:

(1) remains the same.

(2) "Crib" means full size crib, mini crib, or play pen which must meet the applicable requirements for full size baby cribs or non-full size baby cribs as specified by the U.S. Consumer Product Safety Commission.

(2) through (6) remain the same but are renumbered (3) through (7).

(8) "Household member" means any person residing in the home at the time of an emergency placement or foster care license application or any person staying in an emergency placement home or a licensed foster home for more than two weeks.

(7) through (10) remain the same but are renumbered (9) through (12).

~~(11)~~(13) A "serious Serious incident" includes, but is not limited to suicide attempts, use of physical force by a foster parent or any member of the foster parent's household, sexual contact with the child by anyone, emergency medical treatment, injury to a foster child ~~which~~ that requires hospitalization, physical assault by the foster child, involvement with law enforcement by any member of the foster parent's household, including a foster child, or the death of a foster child.

~~(12)~~(14) "Substitute care" or "foster care" means the full-time care of a child who is placed in a youth foster home by the department, another state agency, a tribe, or licensed child placing agency for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment, to children who are removed from or who are without the care and supervision of their parents or guardians.

(13) through (15) remain the same but are renumbered (15) through (17).

~~(16)~~(18) "Youth foster home" or "foster home" means a youth care facility in which substitute care is provided to one a maximum of six children or youth residing in the home, other than including the foster parents' own children, stepchildren, or wards; and no more than two children under the age of two. Exceptions to these limits can be approved.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-22-622, MCA

IMP: 52-1-103, 52-2-102, 52-2-111, 52-2-112, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621, 52-2-622, MCA

37.51.202 YOUTH FOSTER HOMES: LICENSING PROCEDURES

~~(1) Application for a license must be made on an application form provided by the department.~~

~~(2)~~(1) Upon receipt of a completed application packet for license or renewal of license and completion of a licensing assessment, the department shall determine if whether the applicant meets all requirements for licensure as established in these rules. A completed packet consists of all items on the checklist required for initial licensure or renewal except for the home assessment.

~~(3)~~(2) If the department determines that an application or accompanying information is incomplete or erroneous, the department shall notify the applicant in writing of the specific deficiencies or errors, and the applicant shall submit the required or corrected information within 60 days. The department shall may not issue a regular license or renew a license until it receives all required or corrected information.

~~(4) The applicant or licensee shall cooperate with the department in providing the information required by these rules.~~

~~(5)(3) Failure to provide information the An applicant's or licensee's failure to provide information they are is obligated to provide may result in the denial of the application; or, if a license has been issued, may result in other negative licensing action.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.203 YOUTH FOSTER HOMES: LICENSURE AND RENEWAL

(1) The department shall ~~shall~~ may issue a youth foster home, kinship foster home, or therapeutic foster home license to any license applicant that the department determines meets all licensing requirements established by these rules. The initial license will expire one year from the date it is issued unless it is extended up to an additional 60 days pursuant to ~~(5)(4)~~.

~~(2) For placement made on or after June 2, 2006, the number of children for whom a foster home is licensed will be based in part on the number of children already residing in the home. There shall be a maximum of seven children residing in a foster home at any one time unless an exception is made by the regional administrator.~~

~~(3)(2) The department shall may renew a youth foster home or kinship home license biennially on the expiration date of the initial year's license if:~~

~~(a) the foster parents apply for renewal of the foster home license on a form provided by available on the department's website at least 30 days prior to the expiration date of the current license; and~~

~~(b) remains the same.~~

~~(4)(3) The department shall may renew therapeutic foster care licenses annually on the expiration date of the previous year's license if:~~

~~(a) the foster parents apply for renewal of the foster home license on a form provided by available on the department's website at least 30 days prior to the expiration date of the current license; and~~

~~(b) remains the same.~~

~~(5)(4) If the foster parent submits a completed application packet for renewal of a license at least 30 days prior to the expiration of the license, but and the department is unable to complete the relicensing study before the expiration of the license, and ~~but~~ makes a determination that the home is in compliance with the licensing requirements before the expiration date of the previous year's license, the previous year's license will continue in effect for no more than 60 days while the department completes the relicensing study.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.207 YOUTH FOSTER HOMES: PROVISIONAL LICENSURE (1) The department may, at its discretion, issue a provisional license restricted for care of a

specific child or children for any period up to ~~four~~ six months to any license applicant for a youth foster home or kinship foster home ~~which has that:~~

- (a) ~~met~~ meets all licensing requirements for fire safety;
- (b) ensures all adult household members complete, completed and signed sign, and submit a release of information form ~~provided by~~ available on the department's website;
- (c) ~~submitted~~ submits completed fingerprint cards on all adult household members;
- (d) ~~a satisfactory~~ passes a Montana child protective protection background and adult protective services check for all adults present in the home household members; and
- (e) ~~agreed~~ agrees in writing to comply fully with all licensing requirements established by these rules prior to the expiration of the provisional license.

~~(2) The department may, at its discretion, renew a provisional license for no more than a two month period of time if the license applicant shows good cause for unintentional failure to comply fully with all licensing requirements within the time period covered by the prior provisional license.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.209 YOUTH FOSTER HOMES: DUAL LICENSE (1) If an applicant for a foster home or kinship foster home is a licensed or registered day care provider, or if a licensee wishes to become a licensed or registered day care provider, their application must be approved by the regional administrator and the department's Quality Assurance Division (QAD) licensing bureau chief or designee and the designee for the Early Childhood and Family Support Division-Child Care Licensing.~~must approve the dual license or registration.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, 52-2-721, 52-2-722, 52-2-723, MCA

37.51.210 YOUTH FOSTER HOMES: GRANTING LICENSURE EXCEPTIONS (1) An applicant against whom child abuse or neglect has been substantiated ~~or who has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or person with a developmental disability shall~~ may be denied a foster care license unless an exception is granted by a the department ~~regional administrator in his discretion,~~ after careful review of extenuating circumstances ~~which that~~ justify the issuance of a restricted license.

(2) An applicant whose child has been in foster care shall ~~may~~ be denied a foster care license, unless ~~an exception is granted by a~~ the department ~~regional administrator grants an exception~~ because the circumstances ~~leading that led~~ to the provision of services and placement no longer exist. This does not include an applicant whose children were in foster care prior to being placed with the applicant for adoption.

(3) ~~No applicant shall~~ An applicant may not be newly licensed as a youth foster home if any one of the following has occurred within 12 months of the application, unless an exception is granted by a department regional administrator by the appropriate resource family specialist supervisor:

(a) through (e) remain the same.

(4) If any event described in (3)(a) through (3)(e) occurs in a licensed foster home, the foster parents shall notify the licensing worker within 48 hours as required by ARM 37.51.602 and the licensing worker will reevaluate the home within 30 days to determine whether to recommend a change in the licensing status of the home.

(5) The department may grant an exception to a youth foster home or foster home that has more than the maximum of six children or youth residing in the home, including the foster parents' own children, stepchildren, wards, or more than two children under the age of two, after careful review of extenuating circumstances that justify exceeding the maximum numbers allowed.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.216 YOUTH FOSTER HOMES: NEGATIVE LICENSING ACTION

(1) The department, through written notice to the applicant, licensee, or potential emergency placement, will deny or revoke a license or emergency placement upon finding that the applicant, licensee, ~~or emergency placement, or any household member of the applicant's or licensee's household~~ has a conviction for any of the following types of crimes:

(a) ~~felony crimes involving violence, including such as homicide, spousal abuse, felony partner-family member assault, rape, sexual assault, human trafficking, robbery, burglary, kidnapping, animal cruelty, arson and felony aggravated assault, or convictions requiring registration on a sexual or violent offender registry but not including other assault and battery;~~

(b) ~~felony and misdemeanor acts and other crimes against children such as child abuse or neglect, endangering the welfare of a child, incest, child sexual abuse, ritual abuse of a minor, child pornography, child prostitution, internet crimes involving children, and felony unlawful transactions with children;~~

(c) ~~if within the previous five years, a felony conviction for a drug-related offense, including but not limited to the use, distribution, or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous drugs, criminal possession, manufacture, or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs if within the previous five years;~~

(d) ~~if within the previous five years, a conviction for other crimes such as misdemeanor assault and battery, including misdemeanor partner-family member assault, robbery or burglary if convicted within the previous five years; or~~

(e) ~~felony and misdemeanor crimes against older persons or developmentally disabled persons, including such as abuse, sexual abuse, neglect, or exploitation.~~

(2) The department, through written notice to the applicant or licensee, may deny, suspend, restrict, or revoke a license upon a finding that:

(a) remains the same.

(b) ~~the foster home, or a foster parents, or any household member, is~~ are not in compliance with any other licensing requirements;

(c) ~~the a foster parent~~ has made any material misrepresentations to the department, either negligent or intentional, including an omission of information the foster parent is obligated to disclose to the department, regarding any aspect of the foster home;

(d) ~~the a foster parent~~ has failed to use the foster care payments for the support of the foster child;

(e) ~~the a foster parent or other household member~~ has been named as the perpetrator of child abuse or neglect in a substantiated report or their child has been placed in out of home care by the department;

(f) ~~the a foster parent~~ failed to report an incident of suspected child abuse or neglect of any child to the department as required by 41-3-201, MCA, within 24 hours of receiving information pertaining to the incident;

(g) ~~the~~ results of a psychological or medical examination provide reasonable grounds for the department to believe that the foster parent is not an appropriate caretaker for a child; ~~or~~

(h) ~~the a foster parents~~ or anyone living in the foster home may pose any risk or threat to the safety or welfare of a child placed in the foster home; or-

~~(3)(i) The a foster parent home~~ has failed to protect the health, welfare, or safety of a child or the foster home presents a threat to the health, welfare, or safety of a child.

~~(4) A foster care license may be suspended, restricted, or revoked at the discretion of a department regional administrator if the licensee's child is placed in foster care.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 2-4-631, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.217 YOUTH FOSTER HOMES: HEARING PROCEDURES (1) Any applicant or licensee against whom the department takes negative licensing action regarding a youth foster home, kinship foster home, or therapeutic foster home license may request a fair hearing as provided in ARM 37.5.117, 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 2-4-102, 2-4-623, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.301 YOUTH FOSTER HOMES: GENERAL REQUIREMENTS FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS (1) Foster parents must:

(a) through (d) remain the same.

~~(e) be of good moral character;~~

(f) and (g) remain the same but are renumbered (e) and (f).

~~(h)(g)~~ have lived together for at least 24 months unless an exception is granted ~~by a department regional administrator.~~

(2) remains the same.

~~(3) The foster home shall protect the foster child from exposure to sexual or violent language and behavior inappropriate to the child's age, including but not limited to physical activity, visual or other media depictions, and music, including lyrics.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.305 YOUTH FOSTER HOMES: HEALTH VERIFICATION REQUIREMENTS FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS

~~(1) A personal statement of health form, provided by the department available on the department's website, must be completed for each person in the applicant's household member. The form(s) must be submitted to the department with the initial licensure application, any renewal application, and a new form must be submitted prior to relicensure and/or anytime there is a new household member.~~

~~(2) Any person staying in the foster home for more than two weeks must complete a personal statement of health form provided by the department. If the person is an adult, the person must also complete a release of information form provided by the department. The completed forms are to be submitted to the department licensing worker.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.310 YOUTH FOSTER HOMES: CRIMINAL BACKGROUND CHECKS

~~(1) A satisfactory criminal background, motor vehicle, and child and adult protective services check is required for each person living in the household member of the applicant, licensee, or emergency placement.~~

~~(2) A new applicant must submit a completed fingerprint card so that a fingerprint based criminal records check can be requested.~~

~~(3)(2) If a new applicant or household member who has lived only in Montana cannot be successfully fingerprinted, or if two fingerprint cards cannot be successfully read by the Department of Justice (DOJ), a Montana name-based criminal records check will be used for applicants who have not lived in a state other than Montana.~~

~~(4)(3) If an applicant or household member who has lived in states other than Montana cannot be successfully fingerprinted, or if two fingerprint cards cannot be successfully read by the Department of Justice DOJ, a Montana federal name-based criminal records check will be completed and: by request from the DOJ.~~

~~(a) a criminal history check will be requested from every state in which an applicant has lived in the past 15 years;~~

~~(b) a check will be made of the violent offender and criminal history registries in those states if this information is available for states in which the applicant has lived; and~~

~~(c) if after 45 days, the department has been unable to obtain results of a criminal records check for an applicant who has lived in Montana for at least five years, the applicant must sign an affidavit attesting to his lack of criminal history or to~~

~~the details of existing criminal history. The affidavit will be accepted in lieu of results from a criminal history check.~~

~~(5)(4) An annual name-based criminal records check and a motor vehicle check for licensed foster parents and all adult household members are is required for relicensure.~~

~~(5) A motor vehicle record check is required for all licensed drivers in the household for relicensure.~~

~~(6) Persons formerly licensed as foster parents will be treated as new applicants if the former foster parents have not been licensed for a period of more than one year or if the foster parents have lived out of state for any period of time since being licensed in Montana.~~

~~(7)(6) A child protective services check will be requested from all states in which an applicant or any adult household member has lived in for a minimum of the past five years at a minimum.~~

~~(8) If after 45 days the department has been unable to obtain results from a child protective services check, the applicant must sign an affidavit attesting to his lack of child protective services history or to the details of existing child protective services history. The affidavit will be accepted in lieu of receipt of child protective services history results.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.311 YOUTH FOSTER HOMES: PSYCHOLOGICAL AND MEDICAL EXAMINATIONS (1) The department may require a psychological evaluation or medical examination, and/or a signed authorization for release of medical or psychological records from:

(a) remains the same.

(b) any currently licensed foster parent or any member of a currently licensed foster parent's household.

(2) The results of a psychological or medical examination may be considered in determining whether an applicant, ~~or~~ licensee, or member of an applicant's or licensee's household meets licensing requirements and may be relied upon as a basis for negative licensing action.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.602 YOUTH FOSTER HOMES: REPORTS OF CHANGE IN COMPOSITION OF FOSTER HOME (1) Foster parents shall notify the department licensing worker or supervisor, ~~and if applicable, or the licensed~~ child placing agency's licensing worker under whose jurisdiction the foster home operates, within 48 hours of:

(a) through (c) remain the same.

(d) the birth of a child to the ~~applicant's~~ foster parents; or

(e) loss of employment by an ~~applicant~~ one of the foster parents.

(2) At least 30 days prior to moving, foster parents shall report a planned change of residence to the department licensing worker or supervisor ~~and, if applicable,~~ or to the licensed child placing agency under whose jurisdiction the foster home operates. The licensing worker assigned to the family will evaluate the new residence for compliance as soon as possible but not more than ten ~~calendar~~ working days after the move to the new residence.

(3) Foster parents shall provide notice to the department licensing worker or supervisor ~~and, if applicable,~~ or the licensed child placing agency under whose jurisdiction the foster home operates:

~~(a) before agreeing to accept formal or informal placement of any child, including placement of an exchange student, when such placements have been arranged without prior approval of the agency which conducted the foster home licensing study;~~

(b) and (c) remain the same but are renumbered (a) and (b).

(4) If a foster parent is unwilling or unable to care for a child who is placed in the foster parent's care, the foster home shall notify the child's placing worker or their supervisor immediately. The foster parent is not authorized to make ~~his own~~ arrangements for care of the child, except for respite care.

(5) A foster parent may not accept a placement of any child, including foreign exchange students, Bureau of Indian Affairs placement, or tribal placement into the household without prior notice to, and prior approval by, the department or the licensed child placing agency under whose jurisdiction the foster home operates and the prior approval of the department.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.603 YOUTH FOSTER HOMES: THERAPEUTIC FOSTER HOMES

(1) Therapeutic foster parents must meet all requirements for regular foster parents set forth in this rule, the requirements set forth in ARM 37.37.101, et seq., and the additional requirements in this rule and ARM 37.51.1403.

(2) Therapeutic foster parents are in home treatment providers who, in addition to carrying out usual family foster parent responsibilities, implement treatment strategies, and provide treatment interventions under the supervision of a therapeutic foster care agency's clinical staff according to the child's individual treatment plan.

(3) Therapeutic foster care requires the availability of ~~one parent to provide~~ 24 hour per day supervision to deliver therapeutic services as needed. Parenting skills must be sufficient to meet the level of therapeutic foster care being provided, including being adequate to address the needs of the emotionally disturbed youth in the areas of behavior management, supportive counseling, and implementation of the treatment interventions identified in the child's individual treatment plan.

~~(4) One foster parent of a preschool age foster child placed in a therapeutic foster home must not be employed outside of the home unless a written exception is made by a department regional administrator.~~

(5) remains the same but is renumbered (4).

~~(6) A child receiving therapeutic foster care may not be placed in child care in excess of four hours per day without the written approval of a department regional administrator.~~

(7) remains the same but is renumbered (5).

~~(8)(6)~~ Therapeutic foster parents ~~must~~ shall regularly document the youth's progress toward achievement of the individual treatment plan. This documentation must be put in writing and must be incorporated into the youth's case file within 30 days.

~~(9)(7)~~ The department, in conjunction with the licensed child placing agency under whose jurisdiction the foster home operates, may approve the placement of children who are not approved for therapeutic foster care services with youth receiving therapeutic foster care services when:

(a) through (c) remain the same.

(d) the department and treatment team the licensed child placing agency under whose jurisdiction the foster home operates determine that a kinship placement is appropriate and an exception is granted by the regional administrator and licensing bureau chief.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621, 52-2-666, MCA

37.51.608 YOUTH FOSTER HOMES: REPORTS OF SERIOUS INCIDENTS AND THREATS (1) Foster parents shall immediately as soon as possible but in not less than 24 hours report any serious incident as defined in ARM 37.51.102(13) involving a foster child to the person or agency which placed the child and to the department licensing worker or the licensed child placing agency under whose jurisdiction the foster home operates.

(2) Foster parents shall complete a written incident report ~~on a form, provided by the department~~ which is available on the department's website, of regarding any serious incident involving any child in the home. The report shall include the date and time of the incident, the child involved, the nature of the incident, description of the incident and the circumstances surrounding the incident. A copy of the report shall be maintained at the foster home and a copy sent to the department licensing worker or the licensed child placing agency under whose jurisdiction the foster home operates the next working day.

(3) Foster parents shall immediately as soon as possible but in not less than 24 hours report any foster child who has run away from home to the police and the department's Centralized Intake Bureau at 1 (866) 820-5437 ~~and shall report the runaway to the agency which placed the child within the next working day.~~

(4) remains the same.

(5) Foster parents shall report any threats to the health, welfare, or safety of a child at the time of the license application or, with respect to any threat that subsequently arises, within the next working day after becoming aware of the threat, to the placing worker and the department licensing worker or the licensed child placing agency under whose jurisdiction the foster home operates.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 2-4-631, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.801 YOUTH FOSTER HOMES: GENERAL PROGRAM

REQUIREMENTS (1) ~~The A~~ foster parents shall not accept more children than the number specified on the license, without prior approval of the department licensing worker or licensed child placing agency under whose jurisdiction the foster home operates.

(2) ~~The A~~ foster parents ~~must~~ shall arrange for appropriate child care for every child in foster care when the child is not being cared for by a foster parent and is not in school.

(3) ~~The A~~ foster parent shall provide appropriate care including:

(a) remains the same.

(b) personal care, supervision, and attention appropriate to each child's age, needs, and level of functioning;

~~(c) opportunities for educational, social, and cultural growth, through suitable reading materials, toys, and equipment; and~~

~~(d) associations with peer groups and opportunities for experiences in school and community.~~

(4) A foster parent will make careful and sensible parental decisions that maintain the health, safety, and best interests of a child while also encouraging the emotional and developmental growth of the child. A foster parent shall use this standard when determining whether to allow a child in foster care, under the responsibility of the state, to participate in extracurricular, enrichment, cultural, religious, and/or social activities.

~~(4)(5)~~ The A foster parents shall teach each foster child age-appropriate personal care, hygiene, and grooming, and shall provide each child with the necessary supplies.

(5) remains the same but is renumbered (6).

~~(6)(7)~~ The A foster parents, in conjunction with the supervising worker, shall distinguish between tasks which children are expected to perform as part of living together, jobs to earn spending money, and jobs performed for vocational training.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621, ~~52-2-666~~, MCA

37.51.802 YOUTH FOSTER HOMES: COOPERATION OF FOSTER

PARENTS (1) ~~The~~ Foster parents shall cooperate with the placing agency, ~~and participate in case conferences and in-service training.~~ Foster parents shall implement decisions made by the department regarding the child, and shall support the department's ~~permanent~~ permanency plan for the child.

(2) ~~The~~ Foster parents shall permit and encourage contact and visitation between the foster child and the child's birth or legal family, including parents and siblings, except in those cases where a restriction of contact and visitation is part of a court order or the written case plan.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621, ~~52-2-666~~, MCA

37.51.810 YOUTH FOSTER HOMES: CHILD CLOTHING (1) ~~The~~ A foster parents shall ensure that each foster child is supplied with his or her own clothing suitable to the child's age and size.

(2) Clothing shall must be comparable to the clothing of other children in the community.

(3) Children shall must be given appropriate choice in the selection of their clothing.

~~(4) The foster parent shall inventory the child's clothing and other possessions when the child is placed in the foster home and maintain the inventory throughout the time the child is in the foster home.~~

~~(a) All clothing or other items specifically purchased for or given to the child shall be added to the inventory list;~~

~~(b)(4) All clothing or other items that are outgrown, worn out, or missing shall be noted on the inventory list; however, no clothing Clothing or other possessions that came with the child from the child's home shall must not be disposed of without approval from the child's social worker;.~~

~~(c)(5) All of the The child's current clothing and other possessions shall must be sent with the child to any subsequent placement, including a return to the child's home;.~~

~~(d) Foster parents shall record the cost of clothing on the inventory list when the clothing is purchased with funds from the maintenance payment and shall maintain receipts for clothing purchased with funds specifically provided to purchase clothing for the child; and~~

~~(e) Foster parents shall provide the clothing receipts and the inventory list at any time upon request of the department and shall provide the receipts and inventory list to the child's social worker when the child leaves the foster home.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.816 YOUTH FOSTER HOMES: SLEEPING ARRANGEMENTS AND REQUIREMENTS (1) and (2) remain the same.

(3) Children of the opposite sex who are five years of age or older ~~must~~ may not share a bedroom.

(4) and (5) remain the same.

~~(6) Each child must~~ A foster parent shall provide each child with ~~be provided with the child's~~ their own bed, which must be at least 30 inches wide and of a length ~~which is~~ that is adequate for the child's height.

(7) A child under the age of four may be provided with a toddler bed ~~which must use~~ that uses a standard crib mattress, ~~be is~~ is at least 28 inches wide, and ~~have is of~~ is of a length adequate for the child's height.

(8) Children under age two must sleep in a crib, as defined in ARM 37.51.102(2). ~~Cribs must have a snug fitting mattress and there must not be more than 2 and 3/8 inches of space between the vertical slats.~~

(a) Foster parents shall comply with current safe sleep practices for all children under one year of age.

(9) Each bed or crib must have ~~adequate~~ appropriate bedding.

(10) Bunk beds more than two bunks high are prohibited. If bunk beds are used, the upper bunk must have a guardrail. Upper bunks ~~must~~ may not be used by children under eight years of age.

(11) ~~Each~~ A foster parent shall provide each child ~~must be provided~~ with space in a closet, locker, or dresser for storage of the child's clothing and personal belongings. ~~This storage space must be located in his~~ the child's sleeping area.

(12) ~~When placement in a kinship foster home is determined to be in a child's best interests, a regional administrator may approve a requested~~ an exception to one or more provisions (other than (8)(a)) of this rule may be granted by the department after careful review of the circumstances ~~on a case by case basis.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.820 YOUTH FOSTER HOMES: YOUTH INDEPENDENT LIVING PROGRAM, JOB TRAINING, AND EMPLOYMENT

(1) ~~The~~ Foster parents shall cooperate with the department's independent living program staff and contractors to ensure that eligible youth in foster care are encouraged and assisted to access services and benefits offered under the department's Independent Living Program.

(2) ~~The~~ Foster parents shall assist the placing agency, eligible youth in foster care ~~the youth~~, and the Independent Living Program staff, and contractors in developing an appropriate transitional plan for each eligible youth in foster care ~~youth~~ aged ~~16~~ 14 or older.

(3) ~~The~~ Foster parents shall encourage and assist ~~each teenage~~ eligible youth in foster care ~~youth~~ to prepare for the transition from foster care to independent living.

(4) ~~The~~ Foster parents shall assist the placing agency, eligible youth in foster care ~~the youth~~, and the Independent Living Program staff, and contractors in developing the youth's job readiness skills and, when appropriate, assisting the youth in locating employment.

(5) ~~The~~ Foster parents shall assist eligible youth in foster care ~~youth~~ in exploring postsecondary educational opportunities.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621, ~~52-2-666~~, MCA

37.51.825 YOUTH FOSTER HOMES: PHYSICAL CARE OF CHILDREN

(1) ~~The~~ Foster parents ~~must~~ shall work with the placing agency to ensure that the foster child's medical needs are met.

(2) Every foster child ~~shall~~ must have an identified physician.

(3) Medical and dental care, including examinations and treatment, ~~shall~~ must be obtained for children as needed.

(4) ~~The~~ Foster parents, in consultation with the placing agency, shall arrange for each child to have a complete Early Periodic Screening, Diagnosis, and Treatment (EPSDT) well child examination which includes a medical, dental, vision, and hearing screen within 30 days of placement in foster care. Subsequent examinations and treatment must be completed as recommended by the child's physician.

(5) Foster parents shall obtain psychiatric, psychological, and counseling services, including diagnosis and treatment, ~~shall be obtained~~ for each child as when these services are determined to be necessary by the placing agency.

(6) ~~The~~ Foster parents ~~must shall~~ keep the placing agency apprised of illnesses of each foster child ~~which that~~ require medical attention and the results of examinations, tests, and treatment recommended for each child.

(7) All medication ~~shall~~ must be kept in the original containers labeled with the original prescription labels in a place inaccessible to children.

(8) All medication ~~shall~~ must be given as prescribed unless a licensed health care provider rescinds the prescription or otherwise modifies it. The foster parent ~~shall will~~ notify the child's case worker of any changes in medication.

(9) ~~The~~ Foster parents ~~must shall~~ work with the placing agency to ensure that each foster child is immunized in accordance with ARM 37.51.306 and ~~37.51.307~~.

(10) In an emergency, the foster parents shall make arrangements for emergency care at a nearby hospital, clinic, or doctor's office and, as soon as possible thereafter, ~~shall~~ notify the placing agency.

~~(11) When a preschool child with special needs is in foster care, one of the foster parents should not be employed outside of the home. An exception may be granted by a regional administrator.~~

~~(12)(11)~~ Foster parents ~~must may~~ not provide tobacco products in any form to children under the age of 18 who are placed in the foster home.

~~(13)(12)~~ Foster parents ~~must may~~ not allow children placed in the foster home to be exposed to secondhand smoke in the foster parents' home or vehicle.

~~(14)(13)~~ Nothing in ~~(14)(11)~~ or ~~(15)(12)~~ is meant to interfere with traditional or Native American ceremonies involving the use of tobacco.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.901 YOUTH FOSTER HOMES: ENVIRONMENTAL AND SAFETY REQUIREMENTS (1) The foster home and its premises ~~shall~~ must be comparable to other residences of the community and neighborhood in which it is located.

(2) remains the same.

(3) Every interior door ~~shall~~ must be designed to permit the opening of the locked door from the outside in an emergency.

(4) Protective plugs ~~shall~~ must be installed on electrical outlets in all homes occupied by foster children under five years of age.

(5) The foster parents shall keep the home clean and in good repair and the premises ~~shall be kept~~ free from objects, materials, and conditions ~~which~~ that constitute a danger to the occupants.

(6) ~~The~~ Foster parents must shall protect any foster child from any environmental danger or other hazard on the foster care property that the foster parent is aware of and that could affect the health, welfare, or safety of children in care. The foster parent must notify the licensing worker of ~~the~~ any existing concern.

(7) All foster homes ~~shall~~ must be equipped with, or provide access to, a landline or cellular telephone. Telephone numbers of the placing agency, hospital, police department, fire department, ambulance, and poison control center must be posted ~~by each telephone~~ in a place visible to a child in placement.

(8) remains the same.

(9) If the home's water supply is not from a municipal system, ~~the a~~ foster ~~home~~ parent must arrange to, at a minimum, have a basic screen water test conducted at least annually through the Department of Public Health and Human Services, Public Health and Safety Division, Laboratory Services Bureau, Environmental Laboratory Section, Cogswell Building, 1400 Broadway, Room B-204, Helena, MT 59620 to ensure that the water supply remains safe for human consumption. Documentation of the test results must be provided to the licensing worker. If a home's water supply is obtained from an approved source, but the water is stored in a cistern, it is recommended that a basic screen water test be conducted each time the water is replaced and the results provided to the licensing worker.

(10) Children ~~shall~~ may not be knowingly exposed to unsafe levels of lead as determined by the Environmental Protection Agency.

(11) Cleaning materials, flammable liquids, detergents, aerosol products, and other poisonous and toxic materials ~~shall~~ must be kept in their original containers or ~~shall~~ be clearly labeled with both symbols and words indicating that the contents are hazardous. Such substances ~~shall~~ must be kept in a place inaccessible to children and shall be childproofed, if possible. ~~They shall~~ and be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children.

(12) Any pet or animal present at the home with the foster parents' permission ~~shall~~ must not pose a threat to the safety or well-being of any child placed in the home.

(a) ~~The~~ Any pet or animal ~~shall show no evidence of carrying disease present at the home with a foster parent's permission~~ must be vaccinated in accordance with local laws.

(b) Documentation provided by a veterinarian verifying that any pet or animal belonging to ~~the a~~ foster parents and present at the home is in good health must be provided to the department upon request.

(c) Foster parents are responsible for their negligent actions and for any resulting injuries that may be caused by any animal allowed in or around the foster home.

(13) Foster parents shall keep Guns guns and ammunition ~~shall be kept~~ in locked storage with guns stored separately from ammunition. Guns kept in vehicles ~~shall~~ must be locked in the glove compartment or gun rack, ~~shall~~ must be unloaded, and ammunition must be kept locked in a separate location in the vehicle.

(14) Any outdoor play area shall must be maintained hazard free. If any part of the play area is adjacent to a well, machinery, road, drainage ditch, holes, or other hazardous areas, the play area shall must be enclosed with fencing or natural barriers when preschool children are in placement to restrict the children from these areas.

(15) Outdoor equipment, such as climbing apparatus, slides, swings, and trampolines, shall must be anchored firmly and placed in a safe location. A responsible adult must be present and directly observing any activity of a foster child on a trampoline at all times.

(16) ~~The~~ Foster parents shall make swimming and wading pools, and swimming areas, and hot tubs inaccessible to children except when directly supervised by a responsible adult.

~~(17) Foster parents will exercise careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child. All foster parents shall use this standard when determining whether to allow a child in foster care, under the responsibility of the State, to participate in extracurricular, enrichment, cultural, and social activities.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.902 YOUTH FOSTER HOMES: FIRE SAFETY REQUIREMENTS

(1) ~~There shall be two~~ Two unobstructed means of exit must exist from all sleeping areas occupied by foster children. ~~Foster parents must prepare a written plan to rescue children if the primary means of exit is blocked.~~

(2) Foster parents ~~must~~ shall devise a written plan for everyone in the home to exit the home in emergencies and ~~must~~ teach the plan to children placed in the home. ~~There must be regular fire drills at different times of the day and night.~~

(3) A working smoke detector ~~which that~~ is properly maintained and regularly tested shall must be located in each bedroom and in the hallway leading to the bedroom with at least one smoke detector on each level of the foster home.

(4) remains the same.

(5) Each foster home must have a workable portable fire extinguisher with a minimum rating of 2A10BC. Extinguishers shall must be readily accessible and shall be mounted.

(6) ~~No~~ Portable unvented fuel-fired heating devices, such as portable kerosene or oil heaters, are not allowed.

(7) ~~An~~ No extension cord shall may not be used as permanent wiring.

(8) remains the same.

(9) ~~Upon request of the department, the state fire marshal or his designee shall inspect any home for which a license is applied or issued and shall report its findings to the department.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.1001 YOUTH FOSTER HOMES: TRANSPORTATION (1) Foster parents and any person transporting foster children with the a foster parents' parent's permission, shall must possess a valid driver's license and shall meet at least the minimum liability insurance coverage requirements set by state law.

(2) ~~All doors on vehicles~~ Vehicle doors must be locked whenever the vehicle is in motion.

(3) No vehicle shall begin moving until all children are seated and secured in age-appropriate safety restraints ~~which must~~ that are to remain fastened at all times while the vehicle is in motion.

(4) Foster parents must request and receive written travel authorization before taking any child placed by the department:

(a) out of the county for more than 72 hours;

(b) out of the state for more than 72 hours; or

(c) out of the country for travel at any time.

(5) Any travel that interferes with visitation, therapy, education, or other services provided to the foster child must receive prior approval.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.1404 YOUTH FOSTER HOMES: TRAINING EXEMPTIONS EXCEPTIONS (1) ~~An exemption~~ written exception to the required orientation and preservice training must be approved by a department regional administrator prior to initial licensure.

(2) ~~An~~ written exception ~~exemption~~ to the required 15 hours of annual training for relicensure must be approved by a department regional administrator prior to a license being renewed.

(3) ~~Exemptions to any training requirement must be written and a copy maintained in the licensing file.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.1410 YOUTH FOSTER HOMES: REQUIRED TRAINING FOR THERAPEUTIC FOSTER HOMES (1) Therapeutic foster parents ~~must shall~~ each complete ~~18 hours of orientation and preservice training and 15 hours of training described in (2)(a) and (b)~~ 30 hours of training before initial licensure.

(2) Each year thereafter, therapeutic foster parents ~~must shall~~ complete a total of 30 hours of annual training, ~~that may include training in the general areas identified in ARM 37.51.1405(2), but which must also include~~ including a minimum of 15 hours of training directly related to:

(a) through (3) remain the same.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

4. STATEMENT OF REASONABLE NECESSITY

As a result of review of the foster care licensing rules through the Red Tape Relief/Regulatory Reform Initiative, the Department of Public Health and Human Services (department) has determined that the administrative rules for foster care licensing should be amended. Many of the rules were written or last amended in 2006, and changes are needed to ensure the licensing process and rules are current to national standards; are clearly defined; and eliminate or mitigate barriers for the department and providers, while maintaining adequate safety standards for children in care. The department, thus, proposes to amend the rules identified in this notice to update, consolidate, and simplify the administrative rules governing foster care licensing, and to ensure that the licensing process and rules reflect current federal and state requirements and current practices.

37.51.102 YOUTH FOSTER HOMES: DEFINITIONS

The department proposes to add or amend certain definitions to ensure that individuals pursuing a foster care license or seeking to understand the applicable requirements have a clear and complete understanding of terms used in these rules.

Cribs: The proposed definition would align with current federal standards, as well as the department's child care licensing requirements.

Household member: The department proposes to add this definition to provide clarity as to the individuals who are subject to certain requirements in these rules because of their presence in a foster home, thus ensuring that no child is exposed to an individual who poses a risk while in a foster care placement.

Youth foster home: The department proposes to revise this definition, to provide clarity on the total number of children (and the total number of children under the age of two) permitted in a foster home, in the best interests of all the children in the home and to preserve safety. These proposed limits would ensure that foster families have adequate capacity to provide care and supervision to the children placed in their home, while providing the ability to seek an exception in appropriate circumstances.

37.51.202 YOUTH FOSTER HOMES: LICENSING PROCEDURES

The department proposes changes to this rule to combine, streamline, and clarify foster care licensing procedures and to allow for greater flexibility in the licensing process.

37.51.203 YOUTH FOSTER HOMES: LICENSURE AND RENEWAL

The department proposes to amend this rule to provide greater flexibility to foster parents on the timing of renewal applications, while maintaining the requirement that such completed renewal applications be submitted prior to the expiration of their current license. It also proposes to eliminate current ARM 37.51.203(2) because the provision is addressed in the definition of "youth foster home" in ARM 37.51.120(18).

37.51.207 YOUTH FOSTER HOMES: PROVISIONAL LICENSURE

The department proposes to amend the rule to allow for provisional licensing for up to six months, rather than the current four months with an option for two additional months. This would provide greater flexibility and reduce the burden on applicants and CFSD staff, who would not have to submit or process extension requests, while preserving child safety by requiring the applicant and all adult household members to submit to certain background checks.

37.51.209 YOUTH FOSTER HOMES: DUAL LICENSE

The changes proposed to this rule reflect organizational changes in the department and changes in responsibility for foster care and child care licensing within the department.

37.51.210 YOUTH FOSTER HOMES: GRANTING LICENSURE EXCEPTIONS

The department's proposed amendments would remove the language on licensure exceptions for conviction for crimes from this rule, since such convictions would be addressed in amended ARM 37.51.216. The proposal would also revise the provisions addressing how an exception and a license is approved to reflect organizational changes in the department and current departmental practice as to who is authorized to grant or deny such licenses, as well as providing flexibility for future changes in such authorizations.

37.51.216 YOUTH FOSTER HOMES: NEGATIVE LICENSING ACTION

The department proposes to make changes in the list of disqualifying crimes for licensure purposes, to adequately reflect those crimes which pose a risk to children and to add the definition of violent crimes from the Montana Code Annotated (which would prevent confusion with respect to disqualifying offenses). It would also amend the rule to reflect the Social Security Act requirement that all household members in emergency placements and youth foster homes are subject to the same background and other checks as the applicant/foster parents.

37.51.217 YOUTH FOSTER HOMES: HEARING PROCEDURES

Changes to this rule are proposed to make clear that negative licensure action is subject to the fair hearing process.

37.51.301 YOUTH FOSTER HOMES: GENERAL REQUIREMENTS FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS

The department proposes to remove the requirement that foster parents and household members be of good moral character to reflect current practice; the requirement was difficult to operationalize and is no longer practicable. CFSD has been unable to use the requirement as a basis for licensure revocation or denial in a number of years. The proposed elimination of the obligation to protect the foster child from exposure to certain behavior and language inappropriate to the child's age would not preclude the department from holding providers to a standard to ensure the safety and well-being of the foster children in their care. Other changes are proposed to reflect departmental reorganization, current department practice, and to provide flexibility for any future changes in departmental organization or practice.

37.51.305 YOUTH FOSTER HOMES: HEALTH VERIFICATION REQUIREMENTS FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS

The department proposes to amend the rule to incorporate the term "household member," which would be defined in another proposed amendment, and to streamline the rule as a result of the use of that term.

37.51.310 YOUTH FOSTER HOMES: CRIMINAL BACKGROUND CHECKS

The department proposes to amend this rule to reflect the federal requirement that the members of the household of applicants, licensees, and emergency placements submit to background checks. This would ensure clarity for providers as well as department staff in the licensing process. Other changes are proposed to reflect the current procedures for obtaining background checks.

37.51.311 YOUTH FOSTER HOMES: PSYCHOLOGICAL AND MEDICAL EXAMINATIONS

The department's proposed amendment seeks to clarify that psychological and medical evaluation requirements apply also to currently licensed foster parents and their household members.

37.51.602 YOUTH FOSTER HOMES: REPORTS OF CHANGE IN COMPOSITION OF FOSTER HOME

The purpose of the proposed amendments to this rule is to clarify to whom foster care providers are required to provide notice of changes in the composition of the foster home and the timeline(s) that apply to such notifications. The department also proposes to simplify compliance with the rule by combining and clarifying two related requirements on notice and prior approval of the placement of any child into the household.

37.51.603 YOUTH FOSTER HOMES: THERAPEUTIC FOSTER HOMES

The department proposes to eliminate the requirements that one foster parent of a young child in a therapeutic foster home not be employed outside the home and that a child in therapeutic foster care not be placed in child care for more than four hours per day without written approval. The changes are proposed to reflect current practice, especially in light of the current availability of child care facilities that can provide appropriate day care for children with therapeutic needs. The proposed revision would also create greater opportunities for families to foster such children. The department retains the requirement that the use of child care be approved by the child's treatment team and included in the child's treatment plan. Other proposed changes to the rule would clarify and reflect the department's current practice with respect to approvals needed with respect to certain placements in therapeutic foster homes.

37.51.608 YOUTH FOSTER HOMES: REPORTS OF SERIOUS INCIDENTS AND THREATS

The department's proposed amendments would clarify (1) by reference to the definition in ARM 37.51.102, what constitutes a serious incident; (2) to whom reports of serious incidents and threats should be reported; and (3) where forms for such

reports can be obtained. These proposed amendments should simplify foster parent compliance, while ensuring the safety and well-being of children in foster care.

37.51.801 YOUTH FOSTER HOMES: GENERAL PROGRAM REQUIREMENTS

The department proposes to revise this rule (1) to clarify decision making authority regarding foster homes; (2) to remove requirements addressed elsewhere; and (3) to incorporate the parental decision making standard (based on the federal Preventing Sex Trafficking and Strengthening Families Act) previously included in a different rule, but which is more appropriately included in this rule on general foster parent requirements. The proposed clarifications should simplify foster parent compliance.

37.51.802 YOUTH FOSTER HOMES: COOPERATION OF FOSTER PARENTS

The department's proposed amendments would align the rule with current department practice by removing certain mandates on foster parents.

37.51.810 YOUTH FOSTER HOMES: CHILD CLOTHING

The department proposes to remove the requirement for foster parents to maintain an inventory of the foster child's clothing and other possessions. This would eliminate an undue burden on foster families, while maintaining requirements and assurances that the child's clothing and other possessions not be disposed of without social worker approval and that such items be transferred with the child to any subsequent placement.

37.51.816 YOUTH FOSTER HOMES: SLEEPING ARRANGEMENTS AND REQUIREMENTS

The department proposes to amend the rule to clarify existing requirements, reflect changes in departmental organization and decision making authority and practice, and incorporate current safety standards with respect to sleeping (including by cross-reference to the proposed new definition of "crib").

37.51.820 YOUTH FOSTER HOMES: YOUTH INDEPENDENT LIVING PROGRAM, JOB TRAINING, AND EMPLOYMENT

The proposed amendment would align this rule with the current federal criteria for access to the Chaffee program that changed the eligibility age from age 16 to age 14.

37.51.825 YOUTH FOSTER HOMES: PHYSICAL CARE OF CHILDREN

The department proposes substantive amendments to this rule (1) to remove an inapplicable cross-reference; (2) to align this rule with proposed revisions in ARM 37.51.603 with respect to therapeutic foster parents of young children (which would create greater opportunities for families to foster children with therapeutic needs); and (3) to update internal cross-references.

37.51.901 YOUTH FOSTER HOMES: ENVIRONMENTAL AND SAFETY REQUIREMENTS

The department's proposed substantive changes would align the rule with current community and legal standards (including with respect to telephone service, lead paint exposure and abatement, and animals present in the foster home). These proposed changes would reduce burden on foster parents, while ensuring the safety and well-being of foster children. In addition, the department proposes to move the parental decision making standard from this rule to ARM 37.51.801.

37.51.902 YOUTH FOSTER HOMES: FIRE SAFETY REQUIREMENTS

The department proposes to amend this rule to clarify that the requirement for a fire emergency/fire escape plan is a requirement for a written plan. The department proposes to eliminate two current fire safety requirements, judging that child fire safety needs are better met with a written fire escape plan and adequate fire safety equipment in the home. In addition, the department proposes to repeal the requirement for state fire marshal fire inspections; the department has learned that the state fire marshal is unable to conduct fire safety assessments of individual homes and believes that other rules address overall home safety and are adequate to ensure that any questions or concerns regarding fire safety can be addressed by the licensing agency.

37.51.1001 YOUTH FOSTER HOMES: TRANSPORTATION

These proposed amendments would align the rule with current federal requirements under the Preventing Sex Trafficking and Strengthening Families Act on foster parents' transportation of foster children, while still ensuring the safety and well-being of the children.

37.51.1404 YOUTH FOSTER HOMES: TRAINING EXEMPTIONS

The proposed amendments would align the rule to the department's current practices and organization and would provide clarity for families applying for foster care licenses on training and the process of obtaining exceptions from the training requirements.

37.51.1410 YOUTH FOSTER HOMES: REQUIRED TRAINING FOR THERAPEUTIC FOSTER HOMES

The department proposes amendments to this rule to provide clarity about training for families applying for therapeutic foster care licenses and to give flexibility for the child placing agencies that license them on the type of required training.

Fiscal Impact

These proposed rule amendments will not create administrative costs, nor are there any projected cost savings. The proposed rulemaking is estimated to affect all future licensed foster homes as well as those approved for adoption and/or guardianship.

5. The department intends these amendments to be effective April 13, 2024.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., March 8, 2024.

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

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

9. An electronic copy of this 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.

/s/ Paula M. Stannard
Paula M. Stannard
Rule Reviewer

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

Certified to the Secretary of State January 30, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.13.402, 42.13.406,) PROPOSED AMENDMENT
42.13.701, and 42.13.702 pertaining)
to beer and wine tax reporting)
changes to implement HB 124 and)
SB 20 (2023))

TO: All Concerned Persons

1. On March 1, 2024, at 10:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue 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, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on February 16, 2024. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

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

42.13.402 TABLE WINE AND HARD CIDER DISTRIBUTOR'S MONTHLY REPORTS AND TAX RETURN (1) Each winery and table wine distributor shall pay any tax due and file a ~~table wine distributor's monthly~~ quarterly tax return on Form WIT, pursuant to 16-1-411 and 16-3-411, MCA. The form must be filed regardless of whether the winery or table wine distributor sold any table wine that month or hard cider during the quarter.

(2) Each winery and table wine distributor must file the return and pay tax on or before the 15th day of ~~each~~ the month following the end of the quarter for table wine and hard cider sold in the previous ~~month~~ quarter.

(3) Failure to file the return or pay the table wine tax and hard cider tax is sufficient cause for the assessment of penalties and interest in accordance with 15-1-216 and 16-1-411, MCA, and other penalties provided in 16-4-406, MCA.

(4) ~~Each table wine distributor shall monthly file Form WIT-3 to report the total amount of table wine sold to retailers, as required by 16-3-404, MCA. Sections (1) through (3) do not apply to a winery or wine importer that sells its products solely to table wine distributors.~~

(5) For purposes of this tax, a tax year begins on July 1, and a "quarter" means a tax reporting period which begins July 1, October 1, January 1, and April 1 of each

tax year.

AUTH: 16-1-303, MCA

IMP: 15-1-216, 16-1-411, 16-3-404, 16-3-411, 16-4-406, MCA

REASONABLE NECESSITY: House Bill 124 (2023) (HB 124) was enacted by the 68th Montana Legislature and revises the required filing frequency of beer, wine, and hard cider taxes from monthly to quarterly. The department proposes to amend ARM 42.13.402 to align with HB 124's amendments to 16-1-406 and 16-1-411, MCA.

The department also proposes to strike content in (4) as table wine distributors are not statutorily required to report sales to retailers. Instead, the department adds in (4) that a winery and wine importer that solely sells its products to a table wine distributor is not subject to (1) through (3) because they have no tax liability to the department.

The department proposes (5) to clarify the tax year and define the beginning of a quarter for tax reporting and collection.

~~42.13.406 TABLE WINE, HARD CIDER, AND SACRAMENTAL WINE REPORTING REQUIREMENTS (1) All wineries and table wine distributors that sell table wine, hard cider, or sacramental wine in Montana must electronically file the tax returns and reports listed in (2) through (5), on forms provided by the department, and pay any tax due in accordance with the filing frequencies prescribed in 16-1-411, MCA.~~

~~(2) The following entities shall file a wine tax return for table wine sold in Montana and a hard cider tax return for hard cider sold in Montana:~~

~~(a) registered or licensed wineries with a direct shipment endorsement for table wine, hard cider, or both sold directly to consumers;~~

~~(b) licensed wineries for table wine, hard cider, or both sold to licensed retailers;~~

~~(c) licensed wineries, located in Montana, for table wine, hard cider, or both sold to consumers through the winery's sample room; and~~

~~(d) table wine distributors for table wine, hard cider, or both sold to licensed retailers.~~

~~(3) (1) The following licensed entities shall pay any tax due and file a wine tax return on Form WIT for sacramental wine sold in Montana:~~

~~(a) through (c) remain the same.~~

~~(4) Licensed out-of-state wineries that sell table wine, hard cider, or sacramental wine directly to licensed retailers shall report the amount of table wine, hard cider, and sacramental wine sold to each licensed retailer.~~

~~(5) Licensed or registered wineries that sell table wine, hard cider, or sacramental wine to a table wine distributor shall report the amount of table wine, hard cider, and sacramental wine sold to each table wine distributor.~~

~~(6) Licensed retailers that purchase table wine, hard cider, or sacramental wine directly from a licensed out-of-state winery shall report the amount of table wine, hard cider, and sacramental wine purchased from each winery on or before the 15th day of each month following the purchase of the table wine, hard cider, and~~

sacramental wine.

(2) Failure to file the required return or pay the tax is sufficient cause for the assessment of penalties and interest in accordance with 15-1-216 and 16-1-411, MCA, and other penalties provided in 16-4-406, MCA.

AUTH: 16-1-303, MCA

IMP: 16-1-411, 16-3-404, 16-3-411, 16-4-107, 16-4-313, 16-4-1101, 16-4-1102, 16-4-1103, MCA

REASONABLE NECESSITY: Senate Bill 20 (2023) (SB 20) was enacted by the 68th Montana Legislature and generally revises alcoholic beverage taxation laws. The department proposes to amend ARM 42.13.406 to align with SB 20's amendments to statute.

The department proposes to strike (1) and (2) because statute now clarifies who is responsible for paying the tax on table wine and hard cider making the sections obsolete. Sections (4), (5), and (6) are proposed for removal because the information is unnecessarily redundant as (4) is referenced in 16-1-411, MCA, (5) in 16-3-411(2)(c), MCA, and (6) in 16-3-404(2), MCA.

The department proposes the addition of new (2) as notice for licensees of amended and existing law for failure to file required reports and pay the required taxes. New (2) cross-references the relevant statutory authorities which are located in statutes across Title 15 and Title 16, MCA.

42.13.701 PRODUCTION INCREMENTS USED IN THE CALCULATION OF TAXES ON BEER (1) Section 16-1-406, MCA, requires each barrel of beer sold in Montana to be taxed. This tax is based upon the total number of barrels of beer produced by a brewer in a year. For purposes of this tax, "year" means the department's fiscal year which begins on July 1 of each calendar year and ends on June 30 of the following calendar year. "Annual" or "annually" are synonymous with the department's "year." For purposes of this tax, a tax year begins on July 1, and a "quarter" means a tax reporting period beginning July 1, October 1, January 1, and April 1 of each tax year.

(2) remains the same.

(a) For the purposes of production reporting and calculating taxes owed, a brewer who has produced 10,000 barrels of beer or less in the preceding year will begin the next year at the \$1.30 per barrel tax rate. ~~The month~~ quarter after the brewer exceeds a production increment, the per barrel tax rate will increase to the next production increment amount. For example, if the 5,001st barrel is produced ~~on May 20 during the first quarter~~, the tax rate will be \$1.30 for all of the ~~month of May first quarter~~. The per barrel tax rate will increase to \$2.30 beginning with the ~~month of June second quarter~~ and will continue at that rate for the remainder of the year or until the ~~month~~ quarter after the next production increment is exceeded.

(b) remains the same.

(c) For the purposes of production reporting and calculating taxes owed, a new brewer will begin the year at the \$1.30 per barrel tax rate. The ~~month~~ quarter after the new brewer exceeds a production increment, the per barrel tax rate will increase to the next production increment amount. If a new brewer produces more

than 10,000 barrels in the first month quarter of the year, all its production will be taxed at the \$4.30 per barrel tax rate for the year.

(3) A brewer must notify both the department and its wholesalers, in writing, by the end of the month quarter when a production increment is exceeded, resulting in the brewer moving to the next production increment.

AUTH: 16-1-303, MCA
IMP: 16-1-406, 16-1-409, MCA

REASONABLE NECESSITY: As described in the department's amendments to ARM 42.13.402, HB 124 revises the required filing frequency of beer, wine, and hard cider taxes from monthly to quarterly. Similar to ARM 42.13.402, the department proposes to amend ARM 42.13.701 to align with HB 124's amendments to 16-1-406 and 16-1-411, MCA.

The department proposes to amend (1) to clarify the tax year and define the beginning of a quarter for tax reporting and collection. Sections (2) and (3) are amended to change applicable references from "month" to "quarter."

~~42.13.702 BEER REPORTING REQUIREMENTS TAX RETURNS (1) On or before the 15th of each month, a brewery that sells beer directly to a retailer or consumer in Montana shall pay any tax due and file Form BET.~~

~~(2) On or before the 15th of each month, each licensed brewer and beer importer located outside of Montana shall file Form BSM, reporting the amount of beer shipped directly into the state to each Montana beer wholesaler.~~

~~(3) On or before the 15th of each month, a retailer shall file Form BET-2, reporting the amount of beer purchased from out of state breweries.~~

(1) A brewery or beer wholesaler shall pay any beer taxes due and file a quarterly tax return with the department on Form BET, pursuant to 16-1-406, MCA. The form must be filed regardless of whether the brewery or beer wholesaler sold any beer during the quarter.

(2) A brewery or beer wholesaler must pay the beer tax and file the required return on or before the 15th day of the month following the end of the quarter for beer sold during the previous quarter.

(3) Failure to file the required return or pay the beer tax is sufficient cause for the assessment of penalties and interest in accordance with 15-1-216 and 16-1-406, MCA, and other penalties provided in 16-4-406, MCA.

(4) Sections (1) through (3) do not apply to a brewery or beer importer that sells its products solely to a beer wholesaler.

(5) For purposes of this tax, a tax year begins on July 1, and a "quarter" means a tax reporting period which begins July 1, October 1, January 1, and April 1 of each tax year.

AUTH: 16-1-303, MCA
IMP: 16-1-406, 16-3-211, MCA

REASONABLE NECESSITY: As described in the department's amendments to ARM 42.13.402 and 42.13.701, HB 124 revises the required filing frequency of

beer, wine, and hard cider taxes from monthly to quarterly. Similar to the other rules, the department proposes to amend ARM 42.13.702 to align with HB 124's amendments to 16-1-406 and 16-1-411, MCA, which begins with the removal of current (1) and (3) because they are obsolete under the revised law. Section (2) is provided in 16-3-211(2), MCA, which makes it unnecessarily redundant to the statute.

The department's proposal of new (1) is necessary to cross-reference the form a brewery or beer wholesaler must complete and file to report beer taxes. Proposed (2) establishes when a tax return must be filed. Proposed (3) is necessary to inform taxpayers of the penalties, interests, and violations that may occur for failing to comply with the requirements of the law.

The department proposes to add (4) that a brewery and beer importer that only sells its products to a beer wholesaler is not subject to (1) through (3) because they have no tax liability to the department.

The department proposes (5) to clarify the tax year and define the beginning of a quarter for tax reporting and collection.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., March 11, 2024.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The respective primary bill sponsors for HB 124 and SB 20, Representative Bergstrom and Senator Fitzpatrick, were contacted by email on November 14, 2023, and on January 29, 2024.

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State January 30, 2024.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On November 17, 2023, the Department of Agriculture published MAR Notice No. 4-23-282 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 1587 of the 2023 Montana Administrative Register, Issue Number 22.

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

4.12.3104 LABELING FOR SEED KIND AND VARIETY (1) through (1)(a)(xi) remain as proposed.

- (xii) soybean; and
- ~~(xiii) triticale; and~~
- (xiv) remains as proposed but is renumbered (xiii).
- (b) through (4) remain as proposed.

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

NEW RULE I (4.12.3115) GENUINE GROWER DECLARATION FORM

- (1) remains as proposed.
- (2) What is required in a genuine grower declaration form? The grower declaration must contain:
 - (a) and (b) remain as proposed.
 - (c) a signature by the person requesting seed cleaning or conditioning.
- (3) When is a genuine grower declaration form needed? ~~Before~~ Anytime any seed is cleaned or conditioned on equipment not owned by the farmer, the grower declaration is required. In most circumstances, the form should be signed before the cleaning or conditioning is performed, but a signature occurring before the seeds are returned to the farmer is allowed in cases where it is impractical to get a signature before the services are performed.
- (4) through (6) remain as proposed.
- (7) How long must a genuine grower declaration form be retained? The completed form must be retained for one year after the seed cleaning or conditioning occurred.

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

The department received 42 comments from individuals and organizations. The department received eighteen comments in support of the entire rule with eight additional comments in support of one portion of the rule but not the other. The department received twelve comments opposed to the first portion of the rule about variety labeling. The department received four comments opposed to the second part of the rule detailing the required farmer declaration.

Comment 1: Seven commenters disliked the FAQ format of the second portion of the rules. Some of them provided a rewritten version of the rules in the standard format. Three commenters were in favor of the new format.

Response 1: The department understands that change is difficult and that the new format is different. The department believes that the new format helps clearly state when a rule is necessary by stating the question that the law itself does not answer and then providing a clear response. It also avoids the problem of having a separate FAQ that is not in the rule that may go beyond what the law and the rule authorize, by some form of nebulous policy. The department is keeping the new format for now but will monitor the response to it.

Comment 2: Twenty-five commenters pointed out that it is unclear how long a seed cleaner/conditioner must retain the required farmer declaration form or documentation.

Response 2: The department agrees with the commenters. Although the legislature rejected the retention of seed samples, it is unclear how long the legislature intended the seed cleaners to retain the declaration documents. The department changed some of the rule language and punctuation at the recommendation of the commenters. The rule is being amended to require retention of the genuine grower declaration form (or its electronic equivalent) for at least one year after the service is provided to prove compliance with the law. The department would recommend that seed cleaners and conditioners keep it for three years as it is a document that may protect them from some intellectual property lawsuits. An additional question and response consistent with these comments is being amended into the rule.

Comment 3: One commenter requested that in some cases a post-cleaning/conditioning collection of the declaration be allowed to provide maximum flexibility, especially for long-term existing customers.

Response 3: The law requires the disclosure, but does not state that it must be obtained before providing the service. Therefore, a post-cleaning declaration would be appropriate in some cases, but should be done infrequently as it causes the potential for the seed cleaner/conditioner to be out of compliance if they are unable

to get the required declaration after providing the service. An additional question and response consistent with this comment is being amended into the rule.

Comment 4: Six commenters pointed out the rules and the law reference a department-provided sample form. Some of these commenters included additional fields that they felt should be required. The commenters also pointed out that there is no sample form on the department webpage.

Response 4: The comments are correct; the required form is not yet on the department's website. The department will post it once the rules have been adopted, so that the form will be consistent with all the requirements of the law and the rules. The department will only provide those fields required by the law and leave other fields and information to be decided upon by the businesses themselves as opposed to regulating their inclusion.

Comment 5: The department received two comments that this was an attempt to make the seed cleaner/conditioner legally responsible for the actions of farmers.

Response 5: The cleaner/conditioner is already responsible under intellectual property laws for providing services that help violate the property rights of another if it is done on purpose or with intentional ignorance. The declaration is to help the cleaner/conditioner prove they did not provide the services in a state of intentional ignorance by in essence operating a "don't ask what you are cleaning" policy or by providing rental equipment with no inquiry at all.

Comment 6: Three commenters felt requiring the declaration would cost them business because farmers would find it to be intrusive into the farmer's privacy.

Response 6: The department believes farmers engaged in the hiring of seed cleaning/conditioners have no reasonable expectation of privacy in the transaction. To grant such privacy by not asking what a licensed state cleaner/conditioner is providing services for is the exact sort of intentional ignorance the intellectual property law finds problematic. This is a minimally intrusive way to substantiate that the department is doing its part to respect intellectual property holders and those that make their living growing protected seeds.

Comment 7: Eight commenters stated that triticale should not be placed on the list of crops where the variety is required to be stated. A commenter also stated that there is not enough access to non-named varieties of triticale and/or that no non-named varieties exist in Montana. They also pointed out it is not required of some other crops (Alfalfa in particular) in a similar situation.

Response 7: The access level of common seeds is not normally a consideration factor for whether intellectually protected varieties must be listed on the label. The goal of the labeling is to help ensure protected varieties are properly compensated for their use.

Comment 8: Three commenters pointed out that much of the triticale used in Montana comes from Canada and is imported as Variety Not Stated (VNS) so current labeling practices should still be allowed to continue to use the VNS label on those seeds and seed mixes.

Response 8: The federal seed act allows triticale to be labeled as VNS. While Montana has provided additional regulatory protection for wheat under the state seed act, it is unclear at this time that triticale is worthy of additional protection under state law given the disruption it would cause the trade.

Comment 9: Ten commenters pointed out that requiring this label change to triticale will increase the cost of forage in Montana as royalties will have to be paid or decrease the quality of forage (if triticale is not used). This is often paired with the fact that the royalty system was designed for grain/crop production and not forage mixes. Some of these commenters were ranchers.

Response 9: The department believes the comments are correct. Comments 7, 8, and 9 have caused the department to amend the proposed rule to not include triticale currently. Such a change does not seem necessary for the protection of the trade or the research at this time. If parts of the trade believe it to still be necessary, a legislative change is likely the proper course of action.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Christy Clark
Christy Clark
Director
Agriculture

Certified to the Secretary of State January 30, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I pertaining to the)
administration of the Montana Growth)
Fund, a part of the Big Sky Economic)
Development Program)

TO: All Concerned Persons

1. On December 22, 2023, the Department of Commerce published MAR Notice No. 8-99-205 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1769 of the 2023 Montana Administrative Register, Issue Number 24.

2. The department has adopted the above-stated rule as proposed: NEW RULE I (8.99.1101).

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 NO. 1: Commenters had concerns about whether economic developers would use the program because administrative fees are not included.

RESPONSE NO. 1: The loan participation program is through preferred lenders as the participating entity. These lenders may charge interest and/or loan origination fees for their portion of the loan. The department successfully has used this model in the past, including through the State Small Business Credit Initiative Program (SSBCI), which was met with high demand and full allocation of the funds within two days of the program being launched.

COMMENT NO. 2: Comments were received asking for clarity on what the grant program funds could be used for.

RESPONSE NO. 2: MGFGP funds may be used for projects that advance the "Purpose" of the MGFGP, as established on page six of the proposed Guidelines, and/or for projects that fall within the "Types of Uses" identified on page eight of the Guidelines. The intent of the grant program is to assist projects that have completed the feasibility or proposal stage, i.e., are "shovel ready," and will have a significant economic impact in the community and state. Additionally, funds may be used to supply matching funds for a federal grant. Other programs that provide funds for planning grants can be found on the department's website at <https://comdev.mt.gov/>.

COMMENT NO. 3: Comments were received that the thresholds for the forgiveness loan are too stringent.

RESPONSE NO. 3: The initial funding for the Montana Growth Fund is limited. The department's goal is to grow the fund over time to assist more businesses. To ensure this goal, the loan program provides a funding opportunity that is similar to past programs that does not hinder future fund growth.

COMMENT NO. 4: A comment was received that the links to the rural and urban area maps did not work.

RESPONSE NO. 4: The links were updated during the notice period, and correct links were provided to the commenter.

COMMENT NO. 5: A comment was received regarding the need to support infrastructure investment.

RESPONSE NO. 5: The department recognizes the importance of infrastructure investment. Although the Montana Growth Fund may facilitate some investments in infrastructure, it is not the only program administered by the department that facilitates infrastructure investment. Additional programs that support infrastructure projects can be found on the department's website at <https://comdev.mt.gov/>.

COMMENT NO. 6: A comment was received asking how a Basic Sector Company's goods and services would be measured and managed.

RESPONSE NO. 6: The term "Basic Sector Company" is defined on page two of the Guidelines. If applicants believe they satisfy that definition, they will need to attest to that fact to the department. The department may require applicants to provide the factual basis for the attestation, including during the contracting process.

COMMENT NO. 7: A comment was received regarding whether federal EDA RLF loan funds may be used as a match for the loan participation program.

RESPONSE NO. 7: The match requirements for the MGFLP are established at page four of the Guidelines. The required match can be either private concurrent financing, cash injection by business, or any private investment to secure the loan. Other forms of match are not permitted at this time.

COMMENT NO. 8: A comment was received asking to include "expansion of a Montana small business" as a ranking factor.

RESPONSE NO. 8: The department supports Montana small businesses. The definition of "small business" varies between state and federal programs, however, and is difficult to apply consistently. Because the department recognizes Montana "businesses" to include small businesses, small businesses do fall within the ranking factors included in the Guidelines.

COMMENT NO. 9: A comment was received regarding childcare creation as a ranking criterion.

RESPONSE NO. 9: "Childcare creation" is listed on page five of the Guidelines as a ranking factor for the MGFLP. If applicants can explain to the department in their application how their proposed project will create or support childcare opportunities in their community, the department will consider that when reviewing MGFLP applications. Examples of how a proposed project might create or support childcare opportunities in a community could include, but are not limited to, the following: (i) applicants that provide childcare services to employees directly, either on-site or off-site; (ii) applicants that provide childcare stipends, or other support, to employees; and (iii) applicants who provide childcare services to the public, and are applying for funding to expand their operations.

/s/ John Semmens
John Semmens
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State January 30, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULES I and II pertaining to the)
administration of the Big Sky Film)
Grant Program)

TO: All Concerned Persons

1. On December 22, 2023, the Department of Commerce published MAR Notice No. 8-119-206 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1772 of the 2023 Montana Administrative Register, Issue Number 24.

2. The department has adopted the above-stated rules as proposed: NEW RULE I (8.119.401) and NEW RULE II (8.119.402).

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 thanked the department for its efforts regarding the Big Sky Film Grant program as well as the incentive program to bring film production work to Montana.

Response 1: Thank you for your comment.

Comment 2: A comment stated that the program has successfully run for years and has brought incredible industry and income to the community. The commenter hopes the procedures can be worked out to continue to see film production grow.

Response 2: Thank you for your comment.

/s/ John Semmens
John Semmens
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State January 30, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I pertaining to the)
administration of the Pilot Community)
Tourism Grant Program)

TO: All Concerned Persons

1. On December 22, 2023, the Department of Commerce published MAR Notice No. 8-119-207 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1775 of the 2023 Montana Administrative Register, Issue Number 24.

2. The department has adopted the above-stated rule as proposed in the original notice but with a change in the proposed rule number:

NEW RULE I (8.99.1201) INCORPORATION BY REFERENCE OF RULES GOVERNING THE GUIDELINES FOR THE PILOT COMMUNITY TOURISM GRANT PROGRAM (1) through (3) remain 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 that the guidelines and map provide contradictory information on an urban community's eligibility for funding.

Response 1: The department reviewed these documents and determined that the information provided is not contradictory and accurately reflects an urban community's eligibility for funding. Section III of the Guidelines identifies eligible applicants and establishes that urban communities are eligible to apply for funding if they partner with a rural and/or under-visited community.

Comment 2: A commenter asked if urban or over-visited communities are eligible applicants.

Response 2: As established in Section III of the Guidelines, urban and over-visited communities located in Montana are ineligible to apply for program funds as standalone applicants. Urban and over-visited communities are eligible for program funds when they partner with a rural or under-visited community, however.

Comment 3: A comment stated that the intake form implies that communities in urban and over-visited areas are eligible for program funds as standalone applicants but would not realize the maximum point value when ranked.

Response 3: The language "up to" accurately reflects the point value ranking for eligible applicants. Urban and over-visited communities located in Montana can receive points if they are partnered with a rural or under-visited community. Additionally, the intake form does not establish applicant eligibility; applicant eligibility is established by Section III of the Guidelines.

/s/ John Semmens
John Semmens
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State January 30, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT AND
17.4.101, 17.4.301, 17.4.302, 17.4.303,) REPEAL
17.4.304, 17.4.305, 17.4.306, 17.4.307,)
17.4.308, 17.4.801, 17.4.803, 17.4.804,)
17.8.102, 17.8.103, 17.8.120, 17.8.121,)
17.8.221, 17.8.302, 17.8.333, 17.8.602,)
17.8.760, 17.8.764, 17.8.767, 17.8.902,)
17.8.1002, 17.8.1102, 17.8.1201,)
17.8.1202, 17.8.1222, 17.8.1302,)
17.8.1402, 17.8.1502, 17.20.1418,)
17.38.103, 17.38.104, 17.38.201,)
17.38.201A, 17.38.202, 17.38.203,)
17.38.204, 17.38.205, 17.38.206,)
17.38.207, 17.38.208, 17.38.210,)
17.38.211, 17.38.212, 17.38.213,)
17.38.214, 17.38.215, 17.38.216,)
17.38.217, 17.38.219, 17.38.225,)
17.38.227, 17.38.229, 17.38.230,)
17.38.231, 17.38.234, 17.38.239,)
17.38.244, 17.38.248, 17.38.249,)
17.38.261, 17.38.262, 17.38.263,)
17.38.264, 17.38.265, 17.38.271,)
17.38.301, 17.38.302, 17.38.305,)
17.38.310, 17.38.311, 17.38.312,)
17.38.501, 17.38.502, 17.38.503,)
17.38.510, 17.38.511, 17.38.512,)
17.38.513, 17.50.402, 17.50.403,)
17.50.410, 17.50.1307, and 17.56.607)
and the repeal of ARM 17.4.102,)
17.50.101, 17.50.102, 17.50.103,)
17.50.104, 17.50.105, 17.50.110,)
17.50.111, 17.50.112, 17.50.113,)
17.50.118, and 17.50.119 pertaining to)
transfer of rulemaking authority from the)
Board of Environmental Review to the)
Department of Environmental Quality)

TO: All Concerned Persons

1. The Department of Environmental Quality (department) published five proposal notices pertaining to the transfer of rulemaking authority from the Board of Environmental Review to the department. The first (MAR Notice No. 17-432A) was published on September 22, 2023, at page 1050 of the 2023 Montana Administrative Register, Issue Number 18.

2. The department has amended the above-stated rules as proposed.
3. The department has repealed the above-stated rules as proposed.
4. No comments or testimony were received.

/s/ Angela Colamaria
ANGELA COLAMARIA
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State January 30, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
 17.24.301, 17.24.302, 17.24.303,)
 17.24.304, 17.24.305, 17.24.306,)
 17.24.308, 17.24.310, 17.24.311,)
 17.24.312, 17.24.313, 17.24.314,)
 17.24.315, 17.24.316, 17.24.317,)
 17.24.318, 17.24.319, 17.24.320,)
 17.24.321, 17.24.322, 17.24.324,)
 17.24.325, 17.24.326, 17.24.327,)
 17.24.401, 17.24.402, 17.24.403,)
 17.24.404, 17.24.405, 17.24.406,)
 17.24.407, 17.24.412, 17.24.413,)
 17.24.414, 17.24.415, 17.24.416,)
 17.24.417, 17.24.418, 17.24.425,)
 17.24.426, 17.24.427, 17.24.501,)
 17.24.502, 17.24.503, 17.24.504,)
 17.24.505, 17.24.507, 17.24.510,)
 17.24.515, 17.24.516, 17.24.517,)
 17.24.518, 17.24.520, 17.24.521)
 17.24.522, 17.24.523, 17.24.524,)
 17.24.601, 17.24.602, 17.24.603,)
 17.24.605, 17.24.607, 17.24.608,)
 17.24.609, 17.24.610, 17.24.621,)
 17.24.622, and 17.24.623 pertaining to)
 transfer of rulemaking authority from the)
 Board of Environmental Review to the)
 Department of Environmental Quality)

TO: All Concerned Persons

1. The Department of Environmental Quality (department) published five proposal notices pertaining to the transfer of rulemaking authority from the Board of Environmental Review to the department. The second (MAR Notice No. 17-432B) was published on October 6, 2023, at page 1125 of the 2023 Montana Administrative Register, Issue Number 19.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Angela Colamaria
ANGELA COLAMARIA
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State January 30, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 17.30.501, 17.30.502,)	
17.30.606, 17.30.617, 17.30.619,)	
17.30.630, 17.30.702, 17.30.706,	)	(WATER QUALITY BUREAU)
17.30.708, 17.30.1007, 17.30.1102,)	
17.30.1201, 17.30.1202, 17.30.1203,)	
17.30.1206, 17.30.1207, 17.30.1211,)	
17.30.1212, 17.30.1304, 17.30.1322,)	
17.30.1330, 17.30.1331, 17.30.1334,)	
17.30.1341, 17.30.1342, 17.30.1343,)	
17.30.1344, 17.30.1345, 17.30.1346,)	
17.30.1354, 17.30.1361, 17.30.1803,)	
and 17.30.1806 pertaining to transfer)	
of rulemaking authority from the)	
Board of Environmental Review to the)	
Department of Environmental Quality)	

TO: All Concerned Persons

1. The Department of Environmental Quality (department) published five proposal notices pertaining to the transfer of rulemaking authority from the Board of Environmental Review to the department. The third (MAR Notice No. 17-432C) was published on October 6, 2023, at page 1136 of the 2023 Montana Administrative Register, Issue Number 19.

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

3. The department received one comment. A summary of the comment and the department's response is as follows:

COMMENT 1: The U.S. Environmental Protection Agency anticipates approving the proposed rule changes.

RESPONSE 1: The department appreciates the support from the U.S. Environmental Protection Agency on the proposed rule changes.

/s/ Angela Colamaria
ANGELA COLAMARIA
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State January 30, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
17.24.624, 17.24.625, 17.24.626,)
17.24.631, 17.24.632, 17.24.633,)
17.24.634, 17.24.635, 17.24.636,)
17.24.637, 17.24.638, 17.24.639,)
17.24.640, 17.24.641, 17.24.642,)
17.24.643, 17.24.644, 17.24.645,)
17.24.646, 17.24.647, 17.24.648,)
17.24.649, 17.24.650, 17.24.651,)
17.24.652, 17.24.701, 17.24.702,)
17.24.703, 17.24.711, 17.24.713,)
17.24.714, 17.24.716, 17.24.717,)
17.24.718, 17.24.721, 17.24.723,)
17.24.724, 17.24.725, 17.24.726,)
17.24.731, 17.24.751, 17.24.761,)
17.24.762, 17.24.764, 17.24.801,)
17.24.802, 17.24.804, 17.24.805,)
17.24.806, 17.24.811, 17.24.815,)
17.24.821, 17.24.823, 17.24.831,)
17.24.832, 17.24.833, 17.24.834,)
17.24.835, 17.24.836, 17.24.837,)
17.24.901, 17.24.902, 17.24.903,)
17.24.904, 17.24.907, 17.24.911,)
17.24.912, 17.24.920, 17.24.924,)
17.24.925, 17.24.926, 17.24.927,)
17.24.930, 17.24.932, 17.24.1001,)
17.24.1002, 17.24.1003, 17.24.1004,)
17.24.1005, 17.24.1006, 17.24.1007,)
17.24.1008, 17.24.1009, 17.24.1010,)
17.24.1011, 17.24.1012, 17.24.1013,)
17.24.1014, 17.24.1016, 17.24.1017,)
17.24.1101, 17.24.1102, 17.24.1104,)
17.24.1105, 17.24.1106, 17.24.1107,)
17.24.1108, 17.24.1109, 17.24.1110,)
and 17.24.1111 pertaining to transfer of)
rulemaking authority from the Board of)
Environmental Review to the)
Department of Environmental Quality)

TO: All Concerned Persons

1. The Department of Environmental Quality (department) published five proposal notices pertaining to the transfer of rulemaking authority from the Board of Environmental Review to the department. The fourth (MAR Notice No. 17-432D)

was published on October 20, 2023, at page 1212 of the 2023 Montana Administrative Register, Issue Number 20.

2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Angela Colamaria
ANGELA COLAMARIA
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State January 30, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
17.24.1112, 17.24.1113, 17.24.1114,)
17.24.1115, 17.24.1116, 17.24.1117,)
17.24.1118, 17.24.1119, 17.24.1120,)
17.24.1121, 17.24.1125, 17.24.1129,)
17.24.1131, 17.24.1132, 17.24.1133,)
17.24.1134, 17.24.1135, 17.24.1136,)
17.24.1137, 17.24.1138, 17.24.1141,)
17.24.1142, 17.24.1143, 17.24.1144,)
17.24.1145, 17.24.1146, 17.24.1147,)
17.24.1148, 17.24.1201, 17.24.1202,)
17.24.1206, 17.24.1207, 17.24.1208,)
17.24.1209, 17.24.1210, 17.24.1211,)
17.24.1213, 17.24.1214, 17.24.1215,)
17.24.1216, 17.24.1219, 17.24.1220,)
17.24.1221, 17.24.1222, 17.24.1223,)
17.24.1224, 17.24.1225, 17.24.1226,)
17.24.1227, 17.24.1228, 17.24.1246,)
17.24.1247, 17.24.1248, 17.24.1249,)
17.24.1250, 17.24.1251, 17.24.1252,)
17.24.1253, 17.24.1254, 17.24.1255,)
17.24.1260, 17.24.1261, 17.24.1262,)
17.24.1263, 17.24.1264, 17.24.1265,)
17.24.1266, 17.24.1267, 17.24.1301,)
17.24.1302, 17.24.1303, 17.24.1304,)
17.24.1307, 17.24.1308, 17.24.1309,)
17.24.1801, 17.24.1802, 17.24.1803,)
17.24.1804, 17.24.1805, 17.24.1806,)
17.24.1807, 17.24.1808, 17.24.1809,)
17.24.1810, 17.24.1815, 17.24.1816,)
17.24.1817, 17.24.1818, 17.24.1819,)
17.24.1820, 17.24.1824, and)
17.24.1825 pertaining to transfer of)
rulemaking authority from the Board of)
Environmental Review to the)
Department of Environmental Quality)

TO: All Concerned Persons

1. The Department of Environmental Quality (department) published five proposal notices pertaining to the transfer of rulemaking authority from the Board of Environmental Review to the department. The fifth (MAR Notice No. 17-432E) was published on November 3, 2023, at page 1453 of the 2023 Montana Administrative Register, Issue Number 21.

2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Angela Colamaria _____
ANGELA COLAMARIA
Rule Reviewer

/s/ Christopher Dorrington _____
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State January 30, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION AND
RULE I and NEW RULE II and the) AMENDMENT
amendment of ARM 17.30.1001,)
17.30.1005, 17.30.1010, 17.30.1022,) (WATER PROTECTION BUREAU)
17.30.1023, 17.30.1024, 17.30.1033,)
17.30.1040, and 17.30.1041)
pertaining to Montana Ground Water)
Pollution Control System permits)

TO: All Concerned Persons

1. On October 20, 2023, the Department of Environmental Quality published MAR Notice No. 17-433, pertaining to the public hearing on the proposed adoption, and amendment of the above-stated rules at page 1228 of the 2023 Montana Administrative Register, Issue Number 20.

2. The department has adopted NEW RULE I (17.30.1034) and NEW RULE II (17.30.1035) exactly as proposed.

3. The department has amended the following rules exactly as proposed: ARM 17.30.1005, 17.30.1010, 17.30.1033, 17.30.1040, and 17.30.1041.

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

17.30.1001 DEFINITIONS For the purposes of this subchapter, unless the context clearly indicates otherwise, the following terms have the meanings indicated below and are supplemental to the definitions in 75-5-103, MCA:

~~(1) "Advanced treatment system" means a subsurface wastewater treatment system that discharges a total nitrogen effluent concentration of 7.5 mg/L or less total nitrogen.~~

(2) remains as proposed, but is renumbered (1).

~~(3) "Conventional treatment system" means a subsurface wastewater treatment system that provides less nitrogen reduction than Level 2 treatment, or discharges a total nitrogen concentration of greater than 24 mg/L.~~

~~(4) "Cumulative" means the total nitrogen load from the public sewage systems reviewed and approved by the department under a common design plan or serving a common development.~~

(5) through (24) remain as proposed, but are renumbered (2) through (21).

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-301, 75-5-401, MCA

17.30.1022 EXCLUSIONS FROM PERMIT REQUIREMENTS (1) In addition to the permit exclusions identified in 75-5-401, MCA, the following activities or operations are not subject to the permit requirements of this subchapter:

(a) through (c) remain as proposed.

(d) public sewage systems that are reviewed and approved by the department after March 1, 2024, under Title 75, chapter 6, MCA, and ARM 17.38.101 under a common design plan or serving a common development that ~~cumulatively~~ in the aggregate discharge less than one pound of total nitrogen per day;

(e) through (h) remain as proposed.

(2) ~~Cumulative Aggregate~~ total nitrogen loads load for the permit exclusions in (1)(d) ~~are is~~ calculated by adding each contributing load from the public sewage systems reviewed and approved by the department under a common design plan or that serve a common development.

(3) remains as proposed.

AUTH: 75-5-401, MCA

IMP: 75-5-401, 75-5-602, MCA

17.30.1023 PERMIT APPLICATIONS (1) through (3) remain as proposed.

(4) All applications for an MGWPCS permit must be submitted on forms provided by the department and must include the following:

(a) remains as proposed.

(b) location and description of operation of treatment works and disposal systems;

(c) through (6) remain as proposed.

AUTH: 75-5-401, MCA

IMP: 75-5-401, MCA

17.30.1024 REVIEW PROCEDURES (1) through (5) remain as proposed.

(6) The department shall provide a period of not less than 30 days following the date of the public notice during which time any person may submit written views or request a public hearing on the tentative determination. Any request for a public hearing must indicate the interest of the party filing the request and the reasons why a hearing is warranted.

(7) The department may hold a hearing on its own initiative or when it determines good cause exists to hold such a hearing upon request of any person. Public notice of a public hearing on a tentative determination must be given in accordance with ARM 17.30.1040.

(8) If a public hearing is not held pursuant to (6), the department shall, within 30 days after termination of the comment period provided for in (5), make a final determination on issuance or denial of an MGWPCS permit. All written comments submitted during the 30-day comment period must be retained by the department and considered in the final determination.

(9) If a public hearing is held on the tentative determination, the department shall make its final determination on the MGWPCS permit application within 60 days

following the hearing. All comments recorded during the public hearing and written comments submitted during the 30-day comment period required in (5) must be retained by the department and considered in the final determination.

(10) After making the final determination on an MGWPCS permit application the department shall issue an MGWPCS permit or give written notice to the applicant of the department's decision to deny, including notice to the applicant of its right to appeal the denial or final determination to the board.

AUTH: 75-5-401, MCA

IMP: 75-5-401, MCA

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

COMMENT 1: A commenter stated that the proposed rules will directly impact their business. They expressed concern that they will no longer be "called an advanced treatment system" under the proposed rule definitions. The commenter stated, "this will impact my marketing material" and damage business.

RESPONSE 1: The department is deleting the proposed definitions of "advanced treatment system" and "conventional treatment system" from the final amended definitions in ARM 17.30.1001 pertaining to Montana Ground Water Pollution Control System (MGWPCS) permits.

COMMENT 2: A commenter stated: "There is no requirement for [nondegradation review]. So no [nondegradation] evaluations, so no groundwater study, no hydraulic conductivity, no downgradient down below the mixing zone, no significance determination at all up to 16,000 gallons per day. They will not have to be subjected to any [nondegradation] monitoring at all. There will be no significance determination because it will just be assumed that they meet it."

RESPONSE 2: Public sewage systems that meet the exclusion in ARM 17.30.1022(1)(d) and are, therefore, not subject to MGWPCS permit requirements will undergo nondegradation review pursuant to Title 75, chapter 6, MCA, and rules adopted to implement that chapter.

COMMENT 3: A commenter stated: "So what we're doing is we're taking systems that were designed for something else, and we're increasing the potential risk dramatically by going to 16,000 gallons a day essentially with no review at all. It's absurd to think that you would take a system that's been tested for a couple of homes, three, four, five homes maybe, maybe fewer, and approve it wide scale for 16,000 gallons per day with an annual sample."

RESPONSE 3: See the Response to Comment 2. Each "public sewage system," as defined in ARM 17.38.101, that discharges to the subsurface is required to undergo review and approval by the department under Circular DEQ-4. Depending on the treatment technology proposed, elements of the system may also require

department review under Circular DEQ-2. These proposed rules will only change the MGWPCS permit exclusion threshold, which reduces the nitrogen load a public sewage system may discharge before triggering permit requirements.

COMMENT 4: A commenter asked if the one pound of total nitrogen per day load is a continuum or a discrete number.

RESPONSE 4: The department will determine the aggregate daily total nitrogen load discharged by a proposed public sewage system using flow and concentration values provided by the applicant. This is a continuum approach, meaning the aggregate load is a sum of many parts rather than tiers based on proposed treatment systems or treatment categories. Additionally, upon each permit renewal, the department recalculates effluent limitations and reconsiders permit conditions based on updated effluent monitoring and ground water ambient data.

COMMENT 5: The department received 21 comments stating that the department should not add language allowing the practice of "administratively continuing" discharge permits that have expired. The commenters suggested that groundwater pollution discharge permits need to have an expiration date so they can be reevaluated in light of changing environmental conditions and continue to include public participation.

RESPONSE 5: The adoption of NEW RULE I (ARM 17.30.1034) codifies the department's practice of administratively continuing MGWPCS permits until the effective date of a new permit when the permittee submits a timely application for a new permit and, through no fault of the permittee, the permit is not issued by the department on or before the expiration date of the previous permit. The language in ARM 17.30.1034 is verbatim from ARM 17.30.1313, which provides for administrative continuation of Montana Pollution Discharge Elimination System (MPDES) permits. A MGWPCS permit may be issued for terms up to 10 years under ARM 17.30.1032. However, the department issues MGWPCS permits with a five-year term to be more responsive to changing environmental conditions. Permits are reevaluated upon each renewal application. Permits contain special conditions requiring collection and submittal of updated information, which the department uses in characterizing the strength and volume of the effluent, the receiving ground water, and any potential environmental impacts related to the discharge.

COMMENT 6: The department received 23 comments stating that the department needs to address the proposed new definition of "cumulative." Commenters noted that the department's definition of "cumulative" is not consistent with the Montana Water Quality Act (MWQA), the Montana Environmental Policy Act (MEPA), or the federal Clean Water Act, and at least one commenter stated that the definition does not meet the MWQA mandate of ensuring the protection of high-quality water. The commenters stated that they supported the intent to close the loophole in the groundwater discharge requirements, but suggested that the department consider a definition that both addresses the loophole of phased developments that skirt groundwater permitting regulations, while still allowing for a robust, cumulative

impacts analysis to take place. Commenters noted that this would be the department's first attempt to define the term "cumulative" in law or rule. They recommended that the department utilize the term "aggregate" to avoid confusion with the term "cumulative" in other contexts, and a replacement of such terms would provide the department with the necessary tools to address the loophole of phased developments, while avoiding a contradictory, confusing, and unworkable definition of "cumulative."

RESPONSE 6: The department agrees that the use of the term "cumulative" in ARM Title 17, chapter 30, subchapter 10 may lead to confusion with the cumulative impacts analysis required by nondegradation review under ARM Title 17, chapter 30, subchapter 7 and with consideration of cumulative impacts under MEPA. In light of these concerns, the department is deleting the proposed definition of "cumulative" from ARM 17.30.1001.

COMMENT 7: The department received 22 comments stating that the department needs to address the proposed definition of "wastewater." A commenter stated that the current definition will continue the flawed approach of attempting to shoehorn groundwater discharge permitting rules into the open-ended and less-stringent permitting process under the Public Water Supply, Distribution, and Treatment Act as opposed to the separate requirements under MWQA, which are more stringent and have a broader scope. The commenters stated that, instead of narrowing the definition and attempting to relegate groundwater discharge permitting to consider evaluations under the Treatment Act, any rule amendments should include a suitably broad definition of "wastewater" that unambiguously ensures equal agency consideration of pollutant discharges to state waters under the MWQA.

RESPONSE 7: It is the intent of these rule amendments to incorporate the established definition of "wastewater" in ARM Title 17, chapter 38 within ARM Title 17, chapter 30, subchapter 10 to ensure a consistent application of the term within the department. This is appropriate since systems permitted under the MGWPCS permit rules are also reviewed and approved under engineering rules in ARM Title 17, chapter 38. The intent of the revision is to ensure equal agency consideration of discharges and to provide consistency for the public. The definition of "wastewater" in ARM 17.38.101, which will be incorporated in ARM 17.30.1001, is "sewage, industrial waste, other wastes, or any combination thereof." This is a broad definition that includes any conceivable liquid waste stream.

COMMENT 8: The department received 21 comments objecting to the proposed amendment of ARM 17.30.1040 to reduce the time period for public notice of a public hearing from at least 30 days to just 14 days. The commenters stated that the proposed amendment is contrary to the Montana Environmental Policy Act, which requires at least 30 days' notice and applies to groundwater pollution discharge permitting decisions. The commenters noted that weakening and lessening public participation on groundwater pollution discharges fundamentally undermines the explicit water resource protection imperatives of the Water Quality Act as guaranteed by Montanans' constitutional right to a clean and healthful environment.

The commenters suggested that the department should be providing transparent measures for allowing extensions to comment periods, not shortening the baseline timetables for public participation.

RESPONSE 8: The department disagrees that eliminating the 30-day minimum period for notice of a public hearing held pursuant to ARM Title 17, chapter 30, subchapter 10 will weaken and lessen public participation in issues related to proposed MGWPCS permits. The department believes the rule amendment will allow the department to be more responsive to local concerns, especially when the public is made aware of the tentative decision during the 30-day public notice period and requests a hearing. The rules governing public notice of hearings on environmental analysis under MEPA (ARM 17.4.636) do not include a 30-day minimum notice period.

COMMENT 9: The department received two comments stating that in the amendment to ARM 17.30.1001, the term "cumulative" is used in various places and throughout the department's regulatory requirements in many other rules. The commenters suggested to use "cumulative nitrogen load from sewage" or some other terminology to distinguish it from other regulatory scheme's use of the term "cumulative." The commenters also wanted the department to be aware that the definition of "cumulative" is dependent on the terms "common design plan" and "common development" which are not defined in the Water Quality Act laws or rules and that the department should consider adding definitions of those terms.

RESPONSE 9: See Responses to Comments 4 and 6. The department believes the expressions "common design plan" and "common development" are sufficiently well understood by the department and the public. To determine whether a permit exclusion is appropriate, the department will assess the aggregate total nitrogen load by adding each contributing load from the public sewage systems reviewed and approved by the department under a common design plan or that serve a common development. The department will calculate the aggregate daily total nitrogen load discharged by a proposed public sewage system using flow and concentration values provided by the permit applicant.

COMMENT 10: The department received two comments stating that the definition of "advanced treatment system" would seem more appropriately referred to as "advanced sewage treatment system," because not all ground water permits include discharge of treated sewage. Similarly, the commenters proposed that the definition of "conventional treatment system" should be referred to as "conventional sewage treatment system."

RESPONSE 10: See Response to Comment 1. The department is removing the proposed definitions of "advanced treatment system" and "conventional treatment system" from the final rule amendment.

COMMENT 11: The department received two comments stating that the department should consider adding the "list of interested persons" maintained by the department

(as described in paragraph 7 on page 1239 of the notice) to the public notice recipients listed in ARM 17.30.1040(1) to ensure appropriate public notice.

RESPONSE 11: The department appreciates the suggestion, but the list of persons and parties interested in the department rulemaking spans many sectors from air quality to alternative energy. Persons who have subscribed to notices of the department rulemaking are sufficiently engaged to request notification of a tentative determination pursuant to ARM 17.30.1040(1)(c).

COMMENT 12: The department received two comments stating that existing rules ARM 17.30.1024(5) through (9) should not be deleted. The commenters stated that the rules provide important timing requirements that allow predictability and progress for permittees, and, without those rules, permittees are not assured when, if ever, their permit applications will be acted upon by the department. The commenters stated that it is important to keep permitting decisions on track and not allow permits to stack up into a backlog (like MPDES permits), especially when many ground water permits are needed for housing projects. The commenters noted that timelines are crucial to managing development costs and assuring that a project is successful.

RESPONSE 12: The department will not make the proposed deletions to ARM 17.30.1024(5) through (9)—now (6) through (10). The department recognizes and agrees with the comments that these sections provide clarity to applicants and the public. The changes to ARM 17.30.1024(2) through (5) are adopted as proposed.

COMMENT 13: A commenter stated that the proposal to allow the department to administratively continue expired discharge permits represents significant backsliding on water quality protection. The commenter stated that the rule would effectively remove the public's right to participate in a major category of water quality discharge decisions, and it would abrogate the department responsibility to ensure that discharge permits continue to meet environmental goals and standards.

RESPONSE 13: See Response to Comment 5. The department follows the review and notice procedures in ARM 17.30.1024 and 17.30.1040 in renewing MGWPCS permits.

COMMENT 14: A commenter stated that the proposed rules mischaracterize the department's responsibility to appropriately evaluate cumulative impacts of groundwater discharge permits.

RESPONSE 14: See Responses to Comments 4 and 6. The proposed rules do not address cumulative impact evaluation conducted by the department under the Water Quality Act and under the Montana Environmental Policy Act. This proposed rulemaking has no effect on these requirements. In order to avoid confusion, the department will strike the word "cumulative" in the proposed amendments to ARM 17.30.1022(2) and replace it with the word "aggregate" in the final amended rule. The department will determine the aggregate daily total nitrogen load discharged by

a proposed public sewage system using flow and concentration values provided in the permit application. The amendments are necessary to close a loophole and prevent dividing a wastewater source that otherwise would be subject to permit requirements into multiple smaller sources that individually do not exceed the permit requirement threshold.

COMMENT 15: The department received two comments stating that "changes to ARM 17.30.1041 are an appropriate acknowledgment of the state's jurisdiction; however, because some federal agencies may have legitimate interests in ground water issues, ARM 17.30.1040(1)(c) could be amended to include "any person or agency on request."

RESPONSE 15: The provision requiring distribution of information to "any state or federal agency requesting an opportunity to participate in the MGWPCS permit review process" remains unchanged in ARM 17.30.1041(1)(l), renumbered ARM 17.30.1041(1)(f) with these amendments .

COMMENT 16: The department received two comments stating the "amendment to ARM 17.30.1001 adding the term 'modification' seems to contradict ARM 17.30.1023(2) and is likely not necessary given that ARM 17.30.1023(2) defines a modification as one that 'may result in violation of existing permit conditions' and requires an application for the modification '180 days prior to the day on which it is desired to commence operation of the modified discharge.'"

RESPONSE 16: The addition of a definition of "modification" is necessary for consistent application of ARM 17.30.1022(1)(c), which provides an exception from the exclusion for certain public sewage systems from MGWPCS permit requirements if the operator of the system requests a modification after May 1, 1998, or if the department determines that operation of the system has caused a violation of a statute or rule administered by the department after May 1, 1998. The department has received numerous requests to determine permit requirements under this provision making definition of the term "modification" necessary to provide clarity to the department and the public.

COMMENT 17: A commenter stated that the addition of NEW RULE I is appropriate and provides consistency across the department's water permitting provisions. The commenter noted that NEW RULE I should be revised to align with terminology used in ARM 17.30.1033, referring to "reissued" permits instead of "new" permits and acknowledging that ARM 17.30.1033 provides authority to reissue permits.

RESPONSE 17: See Responses to Comments 4 and 5. The intent of NEW RULE I (ARM 17.30.1034) is to codify the department's practice of administratively continuing MGWPCS permits until the effective date of a new permit when the permittee submits a timely application for a new permit and, through no fault of the permittee, the permit is not issued by the department on or before the expiration date of the previous permit. Once the department re-evaluates a permit considering information supplied by the permittee in a renewal application and any updated

effluent and receiving water information, the MGWPCS permit is re-issued and considered a "new" permit for an existing source.

COMMENT 18: A commenter stated that the proposed amendment to ARM 17.30.1022 makes a drastic cut to the exclusion limits. The commenter stated that the rule will set the load limit at 1 pound per day total nitrogen for the exclusion, but the previous exclusion based on daily volume provided exclusions for typical loads ranging from 1.3 to 2.5 pounds per day (assuming typical public sewage ranges between 30-60 pounds per day). The commenter suggested that the 1 pound per day total nitrogen exclusion limit should be deleted.

RESPONSE 18: The proposed change does not require more complex wastewater treatment. Proposed developments may continue to use traditional septic-system style treatment if that is the preferred technology. However, if a public sewage system discharges one pound or more per day total nitrogen, the exemption from MGWPCS permit requirements will not apply. The MGWPCS program is a water-quality protection program authorized by the Water Quality Act. Expressing the permit exclusion threshold in terms of a load limit on the constituent of concern (total nitrogen) rather than a sized-based proxy (flow rate) is appropriate given the nature of ground water flow, contaminant transport, and protection of human health and the drinking water designated use.

COMMENT 19: A commenter requested that the department take note of the deterioration of systems relating to TENORM waste disposal at the Oaks Disposal landfill near Lindsay, Montana. The commenter suggested that the department investigate whether there has been a landfill liner breach at this facility.

RESPONSE 19: The department acknowledges the comment, but notes that regulation of the Oaks Disposal special waste landfill in Lindsay, Montana is outside the scope of this rulemaking.

COMMENT 20: The department received two of the same comment stating NEW RULE II is also appropriate and provides consistency. The commenters suggested that it too should be adjusted to include terminology consistent with the ground water permitting rules, related to reissued permits.

RESPONSE 20: See Response to Comment 17. The intent of NEW RULE II (ARM 17.30.1035) is to establish a clear process for issuing MGWPCS permits. NEW RULE II is based on ARM 17.30.1375, which obligates interested persons to raise all reasonably ascertainable issues and arguments on a tentative department permit decision during the public comment period. The department considers information supplied by the permittee in a renewal application and any updated effluent and receiving water information; and, upon renewal or re-issuance of a MGWPCS permit, the reissued MGWPCS permit is considered a "new" permit for an existing source.

COMMENT 21: A commenter stated that it is not clear what information the department seeks from applicants by adding the term "operation" to ARM 17.30.1023(4)(b), and suggested the term "description" would be more appropriate.

RESPONSE 21: The department will modify the amendment of ARM 17.30.1023(4)(b) to add "location and description of operation of treatment works and disposal systems" to the list of information required from permit applicants in ARM 17.30.1023.

COMMENT 22: The department received the following comment: "We object to the proposed change of evaluating discharges in concentration form, to a mass load form. First, Nondegradation Policy relies upon evaluations of pollutant concentrations, and so too numeric nutrient criteria for downgradient surface waters remains best available science incorporating clear, conservative metrics for evaluating discharge potential for degradation and violations of water quality standards. Moving to a mass-based evaluation would, under the department's corollary new definitions of conventional and advanced treatment systems and based on its past practice, operate to create new wastewater discharger classes per se excluded from Nondegradation Review. This approach exceeds the department's discretion by exempting new categories of activities with the potential to cause or contribute to violations of water quality standards or cause degradation of high-quality water from otherwise mandatory evaluation under 75-5-303, MCA, and ARM 17.30.705 and 17.30.715. While the department can and should consider the aggregate pollutant discharges from a common plan of development in determining whether a permit is required, switching to a mass based approach will promote new exempt classes of discharges without monitoring, without knowledge of baseline water quality health, and without any enforcement or oversight by the department, and certainly will not promote a science-based approach to ensuring the protection and maintenance of high-quality waters or ensuring wastewater discharges from development do not cause or contribute to violations of water quality standards."

RESPONSE 22: See Responses to Comments 2, 3, and 18. Discharges have never been evaluated in concentration form for the purposes of determining permitting requirements under ARM 17.30.1022. The proposed change is from volume of wastewater flow to daily flux of the pollutant of concern based on load. When the department adopted the current rules in the 1990s, flow was a reasonable proxy for the amount of nitrogen in a discharge as there was less variability in treatment capability. It is more reasonable and appropriate to base the department's permit exclusion threshold explicitly on the amount of this pollutant in a proposed discharge.

Nonsignificance and nondegradation analysis will still be compared against numeric criteria expressed as concentrations. No aspect of describing the permit requirement threshold in ARM 17.30.1022 as a mass per day affects those analyses. Concentration is a related function of mass and volume, and one is easily derived from the other. The department scientists regularly interchange between mass and volume depending on the needs of the analysis. Further, the department has a well-established record of using mass by unit time to describe and regulate discharges.

One prominent example is a wasteload allocation within a total maximum daily load document.

The proposed change does not create any new class of discharger. Under the longstanding current system, a subset of public sewage systems is excluded from permit requirements. Under the proposed change to the exclusion in ARM 17.30.1022, the amount of nitrogen potentially discharged by an excluded system is reduced.

COMMENT 23: A commenter objected to the department stopping the practice of informing sister federal agencies of its groundwater permitting practices. The commenter suggested that limiting the knowledge or opportunity of sister agencies to know about a proposal, review its contents, and provide unique feedback on how said proposal may affect resources, activities, or plans within its jurisdiction is short-sighted and represents a myopic approach to watershed management.

RESPONSE 23: See the Response to Comment 15.

COMMENT 24: A commenter stated that the department has an obligation to develop a regulatory framework that imposes testing and maintenance requirements and an approval process that is commensurate with the risk associated with a 7.5 mg/L TN treatment standard.

RESPONSE 24: The changes proposed in this rulemaking do not establish a 7.5 mg/L TN treatment standard. The exclusion from MGWPCS permitting requirements addressed in this rulemaking applies to public sewage systems, which are also subject to engineering and nondegradation review by the department.

/s/ Nicholas Whitaker
NICHOLAS WHITAKER
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State January 30, 2024.

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.156.403, 24.156.405,) REPEAL
24.156.813, 24.156.1622, and)
24.156.1623 and the repeal of ARM)
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 regarding the public hearing on the proposed changes to the above-stated rules, at page 813 of the 2023 Montana Administrative Register, Issue No. 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. On November 17, 2023, the agency published a second notice of extension of comment period for MAR Notice No. 24-156-94 at page 1591 of the 2023 Montana Administrative Register, Issue Number 22.

4. 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 subsequent public hearing was held on December 11, 2023. Comments were received by the deadline.

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

Comment 1: Several commenters questioned whether the definition of "postgraduate clinical experience" applied solely to clinical experience acquired in Montana while in a collaborative agreement.

Response 1: The board believes that clinical experience should be accepted whenever and wherever it is verifiably obtained.

Comment 2: Numerous commenters request the board add a requirement that physician assistants (PA) who change medical practice areas enter into a new collaborative agreement and get an additional 6000 hours of training.

Response 2: The board appreciates the comments. The board realizes this is an area of ongoing concern. However, the statute as presently written does not allow the board to impose additional training requirements when PAs are switching areas of specialty. Facilities, employers, and collaborators may still require additional training of PAs. The board will continue to monitor how the law is implemented. See also response to comment 12 for further information.

Comment 3: Numerous commenters requested the addition of a definition of "medical specialty."

Response 3: See response to comment 2.

Comment 4: Several commenters questioned whether clinical experience gained by PAs prior to the transition to collaborative agreements would count toward the 8000 hours.

Response 4: See response to comment 1.

Comment 5: Several commenters questioned whether experience gained outside Montana would count toward the 8000 hours.

Response 5: The board believes that clinical experience should be accepted whenever and wherever it is verifiably obtained.

Comment 6: Several commenters asked why an affirmation of achieving the 8000 hour threshold was not required.

Response 6: Physician assistants who wish to practice independently will have to affirm the 8000 hours and also have the collaborating or supervising provider affirm the 8000 hours as well. The board has also amended its unprofessional conduct rule to indicate it is unprofessional to practice without the agreement when necessary.

Comment 7: One commenter supported the amendment to ARM 24.156.813, eliminating the required in person visit before a prescriber can prescribe an opioid medication, stating that the amendment will allow for easier treatment of addiction and chronic pain sufferers in isolated or underserved communities.

Response 7: The board aligns the rules with Drug Enforcement Administration guidelines and retains the definition of patient-provider relationship that must be established before providing a controlled substance.

Comment 8: Several commenters requested the supervision language remain in rule.

Response 8: The board has repealed ARM 24.156.1622 after an informal objection from the Economic Affairs Interim Committee, as part of MAR Notice No. 24-156-97.

House Bill (HB) 313 mandates the change from the term "supervision" to "collaboration."

Comment 9: Several commenters support the repeal of ARM 24.156.1622, noting there is no national standard for PA collaboration and no training available.

Response 9: The board has repealed this rule in a separate rules package.

Comment 10: Numerous commenters oppose the repeal of ARM 24.156.1624 for transparency purposes.

Response 10: The board evaluated whether to amend the rule to reflect a PA's ability to practice independently, and determined it was unnecessary to retain the language in this rule. PAs, as well as any provider licensed by this board, have a duty to refer patients to another provider at the patient's request.

Comment 11: Several commenters opposed the repeal of ARM 24.156.1701, stating that repeal would expand the scope of practice of PAs without ensuring competence.

Response 11: PAs in any area of practice are expected to develop and maintain competence. Standards of practice are set out by the Board of Radiologic Technologists.

Comment 12: Numerous commenters requested the board adopt administrative rules defining how competency will be determined, stating it will ensure patient safety and be of use to a PA if employment settings change or collaborating providers change.

Response 12: Collaborative agreements, as required by 37-20-203, MCA, require methods for evaluating the PA's competency, knowledge, and skills. The statute allows flexibility for facilities and collaborating providers to adjust agreements based on practice model, experience of the PA, and facility policies and procedures. The board determined it was unnecessary to draft language in rule based on the specificity of the statute.

Comment 13: One commenter noted that two years of PA training is not equivalent to seven years of physician training.

Response 13: The board agrees with the commenter.

Comment 14: One commenter noted that licensed clinical professionals should practice in a context consistent with their individual education, training, experience, licensure, and appropriate supervision.

Response 14: The board agrees with the commenter. The Legislature sets the collaboration requirements, and statute requires that PAs practice within the scope of their ability, education, training, and licensure with appropriate collaboration.

Comment 15: One commenter indicated the board's proposal to ensure adequate training of PAs was unsatisfactory.

Response 15: The board appreciates all comments. The Legislature has set the minimum requirements for independent practice. See also responses to Comment 2 and 12.

Comment 16: One commenter noted PAs lack any specific education, training, or experience by virtue of their degree and that all knowledge is gained by experience and training after graduation.

Response 16: In general the board agrees, and the Legislature noted this as well and is requiring 8000 hours with a collaborating provider before PAs can practice independently.

Comment 17: One commenter disagreed with allowing PAs to practice independently.

Response 17: HB 313 provides for the independent practice of PAs, so the board cannot countermand a statute by disallowing the practice.

Comment 18: One commenter suggested PAs and NPs work with a doctor in a field for a minimum of 5 years before they can practice independently.

Response 18: NP practice is outside the scope of this rulemaking and is governed by the Board of Nursing. The Legislature has set the minimum requirement for independent practice for PAs at 8000 hours, and the board cannot change that requirement.

Comment 19: One commenter did not agree with the rulemaking.

Response 19: The board appreciates all comments received during the rulemaking process but notes that the Legislature's passage of HB 313 necessitates the board's rulemaking.

Comment 20: One commenter noted that allowing a new PA to practice independently was like letting a YouTube mechanic work on a \$100k truck.

Response 20: The Legislature is requiring 8000 hours of practice with a collaborating provider before PAs can practice independently, so new PAs will not be practicing independently.

Comment 21: One commenter suggested the board consider requiring PAs to maintain NCCPA certification.

Response 21: The Legislature, not the board, sets the minimum requirements for licensure of PAs. The commenter's suggestion would require a legislative change. Any requirements beyond the minimum requirements set by the legislature would be up to facilities and employers.

Comment 22: One commenter noted that the hospital where the commenter works required a PA to get specialized on-the-job training if the PA switched practices.

Response 22: The board agrees and thanks the commenter for the first-hand experience.

Comment 23: Numerous commenters supported the proposal, noting that specialty surgeon PAs will always need an attending surgeon, and that PAs are comfortable collaborating to provide quality medical care.

Response 23: The board agrees and appreciates all comments received during the rulemaking process.

Comment 24: Several commenters supported the rulemaking.

Response 24: The board appreciates all comments received during the rulemaking process.

Comment 25: Numerous commenters noted that physicians are required to receive more training if they change specialties and so the same standard should apply to PAs.

Response 25: The board does not require physicians to obtain additional training to change specialties. Additional training requirements are driven by credentialing bodies for facilities, malpractice insurance, and entities other than the Board of Medical Examiners.

Comment 26: Numerous commenters opposed the idea of making PAs complete 6000 hours when changing medical specialties, noting there is no such corresponding requirement in the board's rules regarding doctors.

Response 26: The board is not adopting any rules requiring extra training for PAs when changing medical specialties. See response to Comment 2. The board will continue to monitor how implementation is happening in practice.

Comment 27: Numerous commenters noted the additional training requirements were part of an agreement struck with the Governor's office.

Response 27: The board understands negotiation and several iterations of HB 313 were considered as part of the legislative process. The final, legislatively approved, signed bill does not contain any additional requirements for PA training beyond the 8000 hours. See also Response to Comment 2.

6. The agency has amended ARM 24.156.403, 24.156.405, 24.156.813, and 24.156.1623 as proposed.

7. The agency has repealed ARM 24.156.1621, 24.156.1624, and 24.156.1701 as proposed.

8. The agency did not amend ARM 24.156.1622 as proposed. This rule was repealed in MAR Notice No. 24-156-97.

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 January 30, 2024

BEFORE THE BOARD OF BEHAVIORAL HEALTH
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT,
ARM 24.219.301, 24.219.401,) ADOPTION, AND REPEAL
24.219.421, 24.219.422, 24.219.431,)
24.219.435, 24.219.501, 24.219.504,)
24.219.601, 24.219.604, 24.219.701,)
24.219.704, 24.219.907, 24.219.912,)
24.219.1001, 24.219.1002,)
24.219.1003, 24.219.1005,)
24.219.1011, 24.219.1201,)
24.219.1205, 24.219.1211,)
24.219.1213, 24.219.1217,)
24.219.2301, 24.219.5006,)
24.219.5008, and 24.219.5010, the)
adoption of NEW RULES I through III,)
and the repeal of ARM 24.219.415,)
24.219.423, 24.219.502, 24.219.505,)
24.219.508, 24.219.512, 24.219.602,)
24.219.605, 24.219.608, 24.219.612,)
24.219.702, 24.219.705, 24.219.706,)
24.219.712, 24.219.923, 24.219.1004,)
24.219.1014, 24.219.1017,)
24.219.1020, 24.219.1023,)
24.219.1026, 24.219.1029,)
24.219.1032, 24.219.1035,)
24.219.1038, 24.219.1209,)
24.219.1215, 24.219.2404,)
24.219.5005, 24.219.5007, and)
24.219.5013, and 24.219.5020)
pertaining to the board of behavioral)
health)

TO: All Concerned Persons

1. On November 3, 2023, the Board of Behavioral Health (agency) published MAR Notice No. 24-219-37 regarding the public hearing on the proposed changes to the above-stated rules, at page 1480 of the 2023 Montana Administrative Register, Issue No. 21.

2. On November 30, 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:

Comment 1: Several commenters requested the board add the California Clinical Examination to the list of approved exams for licensure as a Marriage and Family Therapist, citing that LMFTs from California would face difficulty in getting licensed in Montana. (AAMFT)

Response 1: Applicants who hold out of state licensure are evaluated by the department on a substantially equivalent basis. California's requirements for licensure are substantially equivalent to Montana, and licensees from California who are otherwise routine will not be required to take a second examination. For new applicants, the board retains authority to review and approve licensing exams other than the AMFTRB. The board may choose to include the California examination in a later rules package.

4. The agency has amended ARM 24.219.301, 24.219.401, 24.219.421, 24.219.422, 24.219.431, 24.219.501, 24.219.504, 24.219.601, 24.219.604, 24.219.701, 24.219.704, 24.219.907, 24.219.912, 24.219.1001, 24.219.1002, 24.219.1003, 24.219.1005, 24.219.1011, 24.219.1201, 24.219.1205, 24.219.1211, 24.219.1213, 24.219.1217, 24.219.2301, 24.219.5008, and 24.219.5010 as proposed.

5. The agency has adopted NEW RULES I (24.219.402), II (24.219.403), and III (24.219.436) as proposed.

6. The agency has repealed ARM 24.219.415, 24.219.423, 24.219.502, 24.219.505, 24.219.508, 24.219.512, 24.219.602, 24.219.605, 24.219.608, 24.219.612, 24.219.702, 24.219.705, 24.219.706, 24.219.712, 24.219.923, 24.219.1004, 24.219.1014, 24.219.1017, 24.219.1020, 24.219.1023, 24.219.1026, 24.219.1029, 24.219.1032, 24.219.1035, 24.219.1038, 24.219.1209, 24.219.1215, 24.219.2404, 24.219.5005, 24.219.5007, and 24.219.5013, and 24.219.5020 as proposed.

7. The agency has amended ARM 24.219.435 and 24.219.5006 to correct scrivener's errors with the following changes, stricken matter interlined, new matter underlined:

24.219.435 CONTINUING EDUCATION REQUIREMENTS (1) through (3) remain as proposed.

(4) Of the 20 hours:

(a) a minimum of two hours must relate to suicide prevention for a licensee's first renewal and every ~~three~~ two years thereafter; and

(b) through (10) remain as proposed.

AUTH: 37-1-131, 37-1-319, 37-39-103, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, 37-39-103, MCA

24.219.5006 LAC EDUCATION REQUIREMENTS (1) Applicants must have completed a minimum of ~~270~~ 285 contact hours of training in addiction studies completed either in whole or in part of the degree or certificate in 37-39-310, MCA. If not all 285 required hours were completed as part of the degree, then the applicant can complete those outside of the degree or certificate. The ~~270~~ 285 hours must be in the following areas:

(a) through (i) remain as proposed.

AUTH: 37-1-131, 37-39-103, MCA

IMP: 37-1-131, 37-39-310, MCA

BOARD OF BEHAVIORAL HEALTH
LAURA DEVER, CHAIR

/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 January 30, 2024.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 36.25.701, 36.25.702,)
36.25.705, 36.25.706, and 36.25.707)
pertaining to state land leasing)

TO: All Concerned Persons

1. On November 3, 2023, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-221 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1523 of the 2023 Montana Administrative Register, Issue Number 21.

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

3. No comments or testimony were received.

/s/ Luke Casey
Luke Casey
Rule Reviewer

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

Certified to the Secretary of State January 30, 2024.

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 37.34.1501 pertaining to)
Developmental Disabilities Program)
Incident Reporting and Handling)

TO: All Concerned Persons

1. On August 25, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1025 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 865 of the 2023 Montana Administrative Register, Issue Number 16.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

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

Certified to the Secretary of State January 30, 2023.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 42.19.1235 and 42.20.511 and	)	REPEAL
the repeal of ARM 42.19.1201,)	
42.19.1202, 42.19.1203, 42.19.1204,)	
42.19.1205, 42.19.1211, 42.19.1212,)	
42.19.1213, 42.19.1221, 42.19.1222,)	
42.19.1223, 42.19.1224, and)	
42.22.1305 pertaining to Industrial)	
Property)	

TO: All Concerned Persons

1. On December 22, 2023, the Department of Revenue published MAR Notice No. 42-1070 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1812 of the 2023 Montana Administrative Register, Issue Number 24.

2. On January 18, 2024, the department held a public hearing to consider the proposed amendment and repeal. No interested persons appeared at the hearing. No oral or written comments were received.

3. The department has amended and repealed the above-described rules as proposed.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State January 30, 2024.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.3.2901, 44.3.2902,)
44.3.2903, 44.3.2904, and 44.3.2905)
pertaining to annual security)
assessments and training)

TO: All Concerned Persons

1. On December 22, 2023, the Secretary of State (SOS) published MAR Notice No. 44-2-271 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1847 of the 2023 Montana Administrative Register, Issue Number 24.

2. On January 16, 2024, a public hearing was held on the proposed amendment of the above-stated rule.

3. The Secretary of State has amended the following rules as proposed: ARM 44.3.2902, 44.3.2903, 44.3.2904, and 44.3.2905.

4. The Secretary of State has amended the following rule as proposed, with the following change from the original proposal:

44.3.2901 DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

- (1) through (3)(a) remain as proposed.
- (b) remains the same.
- (c) through (h) remain as proposed.

5. The Secretary of State has thoroughly considered the comment received. A summary of the comment and SOS's response are as follows:

COMMENT #1: A commenter noted that ARM 44.3.2901(3)(b) was missing from the original proposal notice.

RESPONSE #1: The Secretary of State appreciates the comment received. No amendments are being made to ARM 44.3.2901(3)(b). Subsection (3)(b) has been included in this notice to note that it remains the same.

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 30th day of January, 2024.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.3.104 pertaining to)
guidelines for polling place)
accessibility)

TO: All Concerned Persons

1. On December 22, 2023, the Secretary of State published MAR Notice No. 44-2-272 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1850 of the 2023 Montana Administrative Register, Issue Number 24.
2. On January 16, 2024, a public hearing was held on the proposed amendment of the above-stated rule.
3. The Secretary of State has amended the above-stated rule as proposed.
4. The Secretary of State did not receive any comments or testimony.

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 30th day of January, 2024.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION,
RULE I, the amendment of ARM) AMENDMENT, AND REPEAL
44.3.1719, and the repeal of ARM)
44.3.1718 and 44.3.1720 pertaining)
to postelection audit processes for)
federal and nonfederal elections)

TO: All Concerned Persons

1. On December 22, 2023, the Secretary of State published MAR Notice No. 44-2-273 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1852 of the 2023 Montana Administrative Register, Issue Number 24.

2. On January 16, 2024, a public hearing was held on the proposed adoption, amendment, and repeal of the above-stated rules.

3. The Secretary of State has adopted NEW RULE I (44.3.1722) as proposed.

4. The Secretary of State has amended ARM 44.3.1719 as proposed.

5. The Secretary of State has repealed ARM 44.3.1718 and 44.3.1720 as proposed.

6. The Secretary of State did not receive any substantive comments on the proposed rulemaking action.

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 30th day of January, 2024.

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

REVISION: The purpose of this revised opinion is to correct a scrivener's error in paragraph 13 of the original opinion by inserting the word "not" between the words "may" and "be." This correction is consistent with the substance and holding in the original opinion of the Attorney General.

February 9, 2024

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 not 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 December 31, 2023. This table includes notices in which those rules adopted during the period August 25, 2023, through January 26, 2024, 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 December 31, 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 or 2024 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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AGRICULTURE, Department of, Title 4

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- 6-276 Fire Premium Allocation - Presumptively Reasonable Allocations, p. 460, 605, 871
- 6-277 Bail Bond Documents, p. 534, 872
- 6-278 Status of Carriers as Small Insurer Health Carriers, p. 608, 876
- 6-279 Classification Review Committee Agency Organization, Administrative Appeal of a Classification Decision, Telephone and Electronic Hearings, and Establishment, Deletion, or Revision of Classifications for Various Industries for Supplementing the NCCI Basic Manual for Workers' Compensation and Employers Liability, p. 724, 1085
- 6-280 Continuing Education Program for Insurance Producers and Consultants, p. 778, 1397
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- 6-282 Network Adequacy for Managed Care Plans, p. 1401
- 6-283 Quality Assurance for Managed Care Plans, p. 1403

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- 8-94-204 Administration of the Montana Historic Preservation Grant (MHPG) Program, p. 1118, 1602
- 8-99-205 Administration of the Montana Growth Fund, a Part of the Big Sky Economic Development Program, p. 1769
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- 8-111-202 Board of Housing Temporary Assistance to Needy Families (TANF) and Coal Trust Multifamily Homes Loan Programs, p. 936, 1405
- 8-111-203 Administration of the Emergency Shelter Facility Grant (ESFG) Program, p. 949, 1555
- 8-111-208 Housing Credit Program, p. 102
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- 8-119-207 Administration of the Pilot Community Tourism Grant Program, p. 1775

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- 8-97-102 Conservation Reserve Payment Enhancement Program, p. 1

EDUCATION, Title 10

(Board of Public Education)

- 10-54-292 Early Literacy Targeted Intervention Programs, p. 1656

(Office of Public Instruction)

- 10-75-101 Montana Indian Language Preservation Grants, p. 681, 1086

(Montana State Library)

- 10-102-2301 Updating Rules to Comply With Recent Legislation, p. 1431, 1858

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12-603 Public Use Rules of the Department of Fish, Wildlife and Parks Public Lands, p. 952, 45
- 12-610 Partial Closure of the Flathead and Clark Fork Rivers in Sanders County, p. 877
- 12-611 Closing the Kookoosint Fishing Access Site in Sanders County, p. 880
- 12-612 Closing the Paradise Crossing Fishing Access Site in Sanders County, p. 882
- 12-613 Closing the Full Curl Wildlife Management Area in Sanders County, p. 884
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