

MONTANA ADMINISTRATIVE REGISTER

2022 ISSUE NO. 10
MAY 27, 2022
PAGES 708-855



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

STATE AUDITOR, Office of, Title 6

6-268 (Commissioner of Securities and Insurance) Notice of Proposed Adoption - Group Capital Calculation. No Public Hearing Contemplated.	708-712
---	---------

ENVIRONMENTAL QUALITY, Department of, Title 17

17-422 (Public Water Systems) Notice of Public Hearing on Proposed Amendment - Ground Water Under the Direct Influence of Surface Water Determinations - Standards for Public Water Supply Systems.	713-721
---	---------

TRANSPORTATION, Department of, Title 18

18-187 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Utility Right-of-Way Occupancy.	722-731
---	---------

JUSTICE, Department of, Title 23

23-13-264 (Public Safety Officers Standards and Training Council) Notice of Public Hearing on Proposed Amendment - Certification of Public Safety Officers.	732-737
---	---------

LABOR AND INDUSTRY, Department of, Title 24

24-225-42 (Board of Veterinary Medicine) Notice of Public Hearing on Proposed Amendment and Adoption - Licensure of Veterinary Technicians. 738-745

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-979 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Assisted Living Rules Related to Background Checks and Category D Endorsement. 746-781

37-985 Notice of Public Hearing on Proposed Amendment - Financial Eligibility Criteria. 782-784

37-991 Notice of Public Hearing on Proposed Repeal - Families Achieving Independence in Montana (FAIM). 785-787

REVENUE, Department of, Title 42

42-1046 Notice of Public Hearing on Proposed Amendment - Department Procedures Involving Penalties Against Alcoholic Beverages Licenses. 788-795

RULE ADOPTION SECTION

ADMINISTRATION, Department of, Title 2

2-12-623 Notice of Amendment and Repeal - Review and Approval Process for Procurement, Development, and Oversight of Information Technology Resources and Software and Management Systems - Granting Exceptions - Utilization of Centralized State Facilities - Introduction - Definitions - Agency Information Technology Plans - Establishing Policies, Standards, Procedures, and Guidelines - Appeal Process as It Applies to Information Technology Plans, Procurements, and Granting Exceptions. 796

AGRICULTURE, Department of, Title 4

4-22-274 Notice of Amendment - State Grain Lab Fee Schedule. 797

STATE AUDITOR, Office of, Title 6

6-267 (Commissioner of Securities and Insurance) Notice of Adoption and Amendment - Credit for Reinsurance—Reciprocal Jurisdictions - Forms. 798

EDUCATION, Title 10

10-57-288 (Board of Public Education) Notice of Adoption,
Amendment, and Repeal - Teacher Licensing. 799-828

10-66-102 (Office of Public Instruction) Notice of Adoption - State
Diplomas. 829-830

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-557 Notice of Amendment and Repeal - Removal of Tiber
Reservoir From the List of Identified Bodies of Water Confirmed or
Suspected for Aquatic Invasive Mussels. 831-832

JUSTICE, Department of, Title 23

23-8-263 Notice of Transfer - 9-1-1 Telecommunication System. 833-834

LABOR AND INDUSTRY, Department of, Title 24

24-129-19 (Board of Clinical Laboratory Science Practitioners)
Notice of Amendment - Minimum Licensure Standards. 835

REVENUE, Department of, Title 42

42-1049 Notice of Amendment - Department Processing and
Remittance of Local-Option Marijuana Excise Tax Collections to
Localities. 836

42-1050 Notice of Amendment and Repeal - Eliminated Tax Credits. 837

42-1051 Notice of Adoption - Licensed Premises Proximity
Requirements to Places of Worship or Schools. 838

SECRETARY OF STATE, Office of, Title 44

44-2-256 Notice of Amendment - Procedures Facilitating Disabled
Voter Access. 839

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	840-841
How to Use ARM and MAR.	842
Recent Rulemaking by Agency.	843-850
Executive Branch Appointees.	851-852
Executive Branch Vacancies.	853-855

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

In the matter of the adoption of New	)	NOTICE OF PROPOSED
Rule I pertaining to Group Capital	)	ADOPTION
Calculation)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On September 1, 2022, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to adopt the above-stated rule.
2. 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 an accommodation, contact CSI no later than 5:00 p.m. on June 10, 2022, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail csi@mt.gov.

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

NEW RULE I GROUP CAPITAL CALCULATION (1) The lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state commissioner makes a determination that the insurance holding company system meets all of the following criteria:

- (a) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000;
- (b) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
- (c) Has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;
- (d) The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and
- (e) The non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(2) Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to accept in lieu of the group capital calculation a limited group capital filing if:

(a) The insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; and

(b) All of the following additional criteria are met:

(i) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(ii) Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework; and

(iii) The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state commissioner and the non-insurers within the holding company system do not pose a material financial risk to the ability of the insurers to honor policyholder obligations.

(3) For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to (1) or (2) of this rule, the lead state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

(a) Any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in 33-2-1904, MCA, or a similar standard for a non-U.S. insurer; or

(b) Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in ARM 6.6.3401 and 6.6.3402; or

(c) Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(4) A non-U.S. jurisdiction is considered to "recognize and accept" the group capital calculation if it satisfies the following criteria:

(a) With respect to 33-2-1111, MCA:

(i) The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

(ii) Where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in (4)(a)(i).

(b) The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

(5) A list of non-U.S. jurisdictions that "recognize and accept" the group capital calculation will be published through the NAIC Committee Process:

(a) A list of jurisdictions that "recognize and accept" the group capital calculation pursuant to 33-2-1111, MCA, is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under 33-2-1111(7)(b)(iv), MCA. To assist with a determination under 33-2-1111(7)(b)(v), MCA, the list will also identify whether a jurisdiction that is exempted under either 33-2-1111(7)(b)(iii) or (iv), MCA, requires a group capital filing for any U.S. based insurance group's operations in that non-U.S. jurisdiction.

(b) For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of (4)(a)(ii) will serve as support for recommendation to be published as a jurisdiction that "recognizes and accepts" the group capital calculation through the NAIC Committee Process.

(c) If the lead state commissioner makes a determination pursuant to 33-2-1111(7)(b)(iv), MCA, that differs from the NAIC List, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.

(d) Upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to "recognize and accept" the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that "recognize and accept" the group capital calculation.

AUTH: 33-1-313, 33-2-1117, MCA

IMP: 33-2-1111, MCA

4. 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 the business of insurance. Senate Bill 364 (Ch. 344, L. 2021) passed by the 67th Montana Legislature (effective October 1, 2021), amended 33-2-1101, 33-2-1111, and 33-2-1116, MCA, providing a framework for liquidity stress testing, and enacting 33-2-1140, regarding groupwide supervision of internationally active insurance groups.

The National Association of Insurance Commissioners (NAIC) is an organization of insurance regulators from the 50 states, the District of Columbia, and

the U.S. Territories. The NAIC provides a forum for the development of uniform policy and regulation when uniformity is appropriate. The statutory amendments passed in 2021 were based on changes to the NAIC Insurance Holding Company System Regulatory Act (Model #440) (2021). The proposed New Rule I concerning group capital calculation is derived from changes to the associated model regulation of NAIC, the Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (Model #450) (2021). Together the statutory amendments and proposed new rule ensure uniformity with other states. Further, it is anticipated that adoption of the regulations in Model #450 will be required for Montana to meet the NAIC accreditation standards in the next accreditation review period.

The proposed New Rule I regarding group capital calculation is necessary to implement the statutory changes made in 2021 and conform with the NAIC model regulations. Model Regulation #450 is currently under discussion and review by NAIC and the language of proposed New Rule I here is consistent with the changes NAIC is expected to adopt.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., June 24, 2022.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Sam Loveridge at the above address no later than 5:00 p.m., June 24, 2022.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be far in excess of 25 persons based on the potential for the actions to impact every insured person in Montana if domestic insurance companies choose to use a certified reinsurer.

8. 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. Such written request may be mailed or delivered

to the contact person in paragraph 5 above or may be made by completing a request form at any rules hearing held by CSI.

9. An electronic copy of this proposal notice is available through the Secretary of State's website 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, CSI has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Kirsten Madsen

Kirsten Madsen
Rule Reviewer

/s/ Ole Olson

Ole Olson
Chief Legal Counsel
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State May 17, 2022.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 17.36.345, 17.38.101,	)	PROPOSED AMENDMENT
17.38.209, Department Circular)	
PWS-5 regarding ground water under	)	(PUBLIC WATER SYSTEMS)
the direct influence of surface water)	
determinations, and section 3.2.2 and)	
Appendix A of Circular DEQ-1)	
regarding standards for public water)	
supply systems)	

TO: All Concerned Persons

1. On June 17, 2022, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

DEQ is committed to preventing the spread of COVID-19 and promoting the health and wellness of others. Members of the public may participate either in-person or virtually. For in-person meetings, while face masks are not required, meeting attendees are welcome to wear masks. If you are not feeling well, please do not attend the in-person meeting. Registration with Zoom may be made at the following link:

<https://mt->

[gov.zoom.us/j/85115235223?pwd=U1JRZFNWei9lcFc2WmNpSXRRMUMzdz09](https://mt-gov.zoom.us/j/85115235223?pwd=U1JRZFNWei9lcFc2WmNpSXRRMUMzdz09)
Passcode: 655654

Or One tap mobile :

US: +12133388477,,85115235223#,,,,*655654# or
+12063379723,,85115235223#,,,,*655654#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 213 338 8477 or +1 206 337 9723 or +1 646 558 8656

Webinar ID: 851 1523 5223

Passcode: 655654

International numbers available: <https://mt-gov.zoom.us/j/85115235223?pwd=U1JRZFNWei9lcFc2WmNpSXRRMUMzdz09>

Or an H.323/SIP room system:

H.323: 162.255.37.11 (US West) or 162.255.36.11 (US East)

Meeting ID: 851 1523 5223

Passcode: 655654

SIP: 85115235223@zoomcrc.com

Passcode: 655654

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department, no later than 5:00 p.m., June 12, 2022, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQGWUDISWRule2022@mt.gov.

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

17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) Department Circular DEQ-1, "Standards for Water Works," ~~2018~~ 2022 edition;

(b) through (j) remain the same.

(k) Department Circular PWS-5, "Ground Water Under the Direct Influence of Surface Water Evaluation," ~~2002~~ 2022 edition;

(l) through (2) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed changes to ARM 17.36.345, which would incorporate into the department's subdivision rules the changes to DEQ-1 and PWS-5 discussed elsewhere in this notice of proposed rulemaking, are necessary to ensure that all of the department's programs are using the same and most recent editions of the circulars.

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR PUBLIC SEWAGE SYSTEM (1) through (19) remain the same.

(20) For purposes of this chapter, the board adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) Department Circular DEQ-1, ~~2018~~ 2022 edition, which sets forth the requirements for the design and preparation of plans and specifications for public water supply systems;

(b) through (21) remain the same.

AUTH: ~~75-6-103~~ 75-6-104, MCA

IMP: ~~75-6-103~~ 75-6-104, MCA

REASON: The proposed change to ARM 17.38.101, which would incorporate into the department's public water and wastewater engineering rules the changes to DEQ-1 discussed elsewhere in this notice of proposed rulemaking, is necessary to

ensure that all of the department's programs are using the same and most recent of the circular.

17.38.209 GROUND WATER UNDER THE DIRECT INFLUENCE OF SURFACE WATER DETERMINATIONS (1) The ~~board~~ department adopts and incorporates by reference the Department of Environmental Quality Circular PWS-5, Ground Water Under the Direct Influence of Surface Water Evaluation, 2008 2022 edition, which sets forth the standards for making ground water under the direct influence of surface water determinations.

AUTH: ~~75-6-103~~ 75-6-104, MCA

IMP: ~~75-6-103~~ 75-6-104, MCA

REASON: States that administer their own drinking water programs, such as Montana, are required to provide a description of how the state determines which systems using a ground water source are under the direct influence of surface water (GWUDISW). 40 C.F.R. § 141.16(b)(2)(i)(B). While the Environmental Protection Agency (EPA) requires that states to determine which systems are GWUDISW, it leaves the specifics of that determination to each state. Montana has adopted procedures for making the GWUDISW classification in Department Circular PWS-5, which has not been revised since 2008. The department now proposes to adopt a revised 2022 edition of Department Circular PWS-5 (proposed Circular).

The most significant changes proposed by the department include transferring assessment and testing responsibilities from system owners to the department; modifying the criteria and scores in the preliminary assessment (PA); emphasizing that microparticulate analyses (MPA) are the determining factor in the GWUDISW classification; updating the circular to be consistent with other recently adopted rules; and removing extraneous nonregulatory information. Each section of the proposed Circular is discussed below.

Section 1 of the proposed Circular provides a general introduction explaining the Circular's purpose and how the Circular protects public health.

Section 2 of the proposed Circular provides definitions for types of ground water sources used in the Circular. In Section 2.1 and 2.4, the proposed Circular defines the terms "subsurface water source" and "ground water" to differentiate between ground water generally and water that, after evaluation, is not surface water or GWUDISW. The definitions of "surface water" and "ground water under the direct influence of surface water" in Sections 2.2 and 2.3 remain the same as the existing requirements, except that the proposed description of surface water allows the department to exclude temporary surface water bodies if they are unlikely to harbor or transport surface water bodies and do not provide an environment for Giardia and Cryptosporidium cysts to be collected and transported to the groundwater. Without exclusion of these water bodies in the PA, many subsurface water sources would be required to undergo an unnecessary MPA.

Section 3 of the proposed Circular is an applicability section that requires each subsurface water source that serves or is intended to serve a public water supply system be evaluated to determine whether the source is GWUDISW. This is

necessary because all water sources piped to the water system have the possibility of contributing contaminated water to the rest of the system.

Section 4 of the proposed Circular describes the GWUDISW evaluation process, including the PA and the MPA. Because each GWUDISW analysis is source-specific, this section explicitly provides that the department may rely on all other relevant information in making the GWUDISW classification. To effectively gather that information, this section requires owners of public water systems to provide additional information if requested by the department.

Section 4.1 of the proposed Circular describes the PA process. The PA allows the department to screen out water sources that are easily classified as ground water and focus on those sources that need further review. To do this, the PA looks at various factors relevant to surface water influence and assigns point values relative to the risk of surface water influence on the source. Sources that score more than 40 points on the PA warrant further review.

The proposed Circular maintains the existing score of 40 points for springs, horizontal wells, and infiltration galleries. These sources, by design or construction, are more likely to be influenced by surface water and warrant further review. For purposes of classification under the Circular only, infiltration galleries are treated as a type of horizontal well due to constraints with the EPA database for public water supply systems.

The proposed Circular maintains the existing score of 40 points for sources with a history of or a suspected outbreak of *Giardia* or other pathogenic organisms associated with surface water for the current system configuration. Protecting drinking water supplies from such organisms is the very purpose of the GWUDISW evaluation process.

The existing circular assigns scores for a record of acute maximum contaminant level (MCL) violations of the Total Coliform Rule. The proposed Circular modifies this criterion in favor of the number of *E. coli*-positive distribution samples in the previous three years, with 5 points for one positive sample and 10 points for two or more samples. These changes are necessary to remove references to the Total Coliform Rule and the total coliform MCL, which were superseded in 2016 by EPA's promulgation of the Revised Total Coliform Rule. These changes are also necessary to incorporate *E. coli* source samples, which were not required before the 2009 Groundwater Rule. The proposed changes do not score additional points for more than two positive *E. coli* distribution samples, since two samples already indicates a repeatable presence of contamination, and additional samples would provide minimal new information.

The proposed Circular includes a new score for positive *E. coli* source samples, which is weighted more heavily than distribution samples. This is necessary because source samples give more direct evidence of ground water contamination than distribution samples, which can be influenced by any component of the water system. Further, the presence of *E. coli* in ground water indicates that the bacteria traveled from the digestive tract of a warm-blooded animal to the ground water sample in less than 72 hours, which provides strong evidence of direct surface water influence.

The proposed Circular maintains the existing score of 5 points for DEQ-verified complaints about turbidity. Turbidity is a physical property of water quality that provides some supporting evidence of direct surface water influence.

The proposed Circular maintains the existing scores based on the horizontal distance between the source and surface water. The risk that a ground water source is under the direct influence of surface water is less likely the farther the source is from the surface water. Generally, water sources that are farther from surface water have undergone more filtration and thus may be scored lower on the PA. Water sources less than 100 feet from surface water are close enough to question whether there is sufficient filtration and thus are scored 40 points, requiring further review and MPAs. As mentioned above, the department may exclude from this separation distance those temporary surface water bodies that are unlikely to harbor or transport surface water organisms to the ground water.

The existing circular includes a single score of 15 points for poorly constructed wells, which it describes as uncased wells or those where the annular space is not sealed to a depth of at least 18 feet below the land surface. The proposed Circular adds specificity by defining the key elements of proper well construction relevant to surface water influence. The proposed changes would require evaluation of well casing, annular seal thickness, and depth of sealing material, which are the most important construction features for protecting the well from surface water contamination.

With regard to well casing, the proposed Circular specifies that the well must be cased to at least the top of the water-bearing unit. This is because a casing to a shallower depth increases the risk of surface water influence. The proposed Circular also updates the depth of sealing material to the modern standard of 25 feet, which has been a requirement included in the well drillers' rules since 2010 and in Department Circular DEQ-1 since 2014. Because the shallowest casing joint is often at 18 feet, wells with less than 25 feet of sealing material have a greater risk of direct surface water influence. The last proposed change for well construction requires a borehole diameter of at least 3 inches greater than the casing diameter, which provides a better likelihood of proper seal than a lesser diameter. Further, the 3-inch requirement is consistent with long-existing well drillers' rules and provides indicia of proper well construction.

The existing circular provides criteria and scores for well intake construction and static water level for wells in unconfined or semi-confined aquifers. The proposed Circular removes the reference to unconfined and semi-confined aquifers. Determining whether an aquifer is unconfined or semi-confined requires information and training that may not be available to department field staff when completing the PA form. While the type of aquifer cannot be practically considered in the field as part of the PA, it remains a factor to be considered in the final GWUDISW decision. The scores remain unchanged in the proposed Circular.

The proposed Circular removes the criterion for well cap construction. Questions about the well cap are now handled much more effectively by the Groundwater Rule, which was adopted after the last revision to PWS-5.

The proposed Circular modifies the PA determination by removing the pass/fail determinations. This is necessary to characterize the purpose of the PA

more accurately—that is, a screening tool to help the department determine whether a source is ground water or needs further review.

Sources that score 40 or fewer points may be classified as ground water unless other information indicates that further review is necessary. The PA is not meant to be a final determination but is a tool intended to screen those sources that are easily classified as ground water. In other cases, a source may score less than 40 but may have some source- or site-specific information that warrants further review. Conversely, sources that score 40 or more points indicate a higher risk of surface water influence and warrant further review. The department may incorporate geologic maps, aquifer tests, nearby well logs, and other relevant information to understand the hydrogeology of the area and reach a determination. If there is still uncertainty as to the direct surface water influence, then the department may require an MPA.

Sections 4.2 and 4.3 of the of the proposed Circular describe the MPA and the classification of sources. If the PA and other relevant information indicate a risk of surface water influence, the department may require an MPA. For the MPA to be a useful examination of potential surface water influence, the MPA must be completed under circumstances where surface water influence is most likely to occur. Such variables include, for example, the construction status of the source, the time of year, the operation of the test source and nearby sources, and the state of the nearby surface water.

In these sections, the proposed Circular adopts procedures that differ from the existing circular in two significant ways. First, the existing circular requires that MPAs be conducted by the owner of the public water supply system. The proposed circular would put this requirement on the department. In developing the proposed Circular, one informal reviewer noted that the owner of each public water supply system should have the option to allow the department to complete the MPA or to do it themselves. Experience in administering PWS-5 has revealed that MPAs are often beyond the expertise and capabilities of the owners of the systems. Leaving this responsibility to the owners also creates the risk of introducing error in the collected samples and means that the department cannot verify that the sampling was done correctly. The department has conducted this sampling for the last several years. This process has proven to reduce the burdens on the system owners, to result in more consistent sampling, and to provide more confidence in the final analytical result.

The second significant proposed change would require that the MPA be the basis for classification for all sources with MPA results. The existing circular provides three methods for evaluating whether a groundwater source is under the direct influence of surface water: an MPA, a hydrogeologic assessment (HA), or a water quality assessment (WQA). While the HA and WQA can address a hydraulic connection between surface water and ground water, they do not address whether surface water organisms can be and are being transported to the subsurface water. The MPA, on the other hand, is much more conclusive because it measures the occurrence of organisms whose presence in ground water can only be the result of direct influence of surface water.

The proposed Circular maintains the existing requirement that a water source with one or more moderate- or high-risk MPA results will be classified as

GWUDISW, because such sources pose an increased risk to public health. In developing the proposed Circular, one informal reviewer encouraged the department to adopt an alternate methodology that, to the department's knowledge, has not been adopted by EPA or other states and would require significant reconsideration of other department rules and circulars. Because of that, the department decided to maintain the existing regulatory scheme and methodologies for this proposed rule update.

In developing the proposed Circular, DEQ considered conducting MPAs on proposed sources at the request of the system owner. DEQ has accommodated these requests in the past. After further consideration, DEQ removed proposed sources from the Circular. The final construction and operation of a source is unlikely to be identical as proposed, meaning that the MPA results for a proposed source may not be representative of the results of the final developed source.

The proposed Circular concludes with a section regarding the record of decision that the department issues for each water source, providing uniform notification to each system owner.

Finally, the proposed changes to ARM 17.38.209 update the references to the statutory provision authorizing the department to conduct rulemaking and the statutory provision being implemented by adopting the proposed Circular. Updates to these references are necessary after the 2021 Legislature transferred rulemaking authority from the Board of Environmental Review to the department. Sec. 111, Ch. 324, L. 2021.

4. The proposed changes to Circular DEQ-1 consist of inserting Table A-1, available as described in paragraph 5 below, into Appendix A, and as follows:

Circular DEQ-1: 3.2.2 Quality

The Department will determine, on a case-by-case basis, the minimum treatment required for a ground water source to ensure compliance with ARM Title 17, Chapter 38, Subchapter 2.

An assessment must be made of the factors, both natural and man-made, which may affect water quality in the well and aquifer. Such an assessment may include obtaining samples over a sufficient period of time to assess the microbiological and physical characteristics of the water including dissolved gases and chemical and radiological characteristics. A ground water under the direct influence of surface water ~~determination~~ determination assessment acceptable to MDEQ must be provided for all new wells. Approval of plans and specifications under this Circular is not a determination that a source is ground water for purposes of PWS-5 or the Surface Water Treatment Rule. Regardless of plan and specification approval, all sources must be evaluated by the Department pursuant to the requirements of PWS-5.

REASON: Circular DEQ-1, which provides engineering design standards for community public water supply systems, requires the applicant to provide information regarding the likelihood that a proposed source is GWUDIWS. As discussed elsewhere in this notice of proposed rulemaking, a final GWUDISW determination can only be made once the source is constructed and operating as

intended. The proposed changes to Circular DEQ-1 clarify that all sources must be evaluated by the department pursuant to the requirements of PWS-5. This proposed change is not substantive and does not change any department procedures, but it does clarify the relationship between the two circulars.

The department also proposes to reinsert Table A-1 into Appendix A of Circular DEQ-1. The 1996 Amendments to the Safe Drinking Water Act require primacy states to develop strategies to ensure the managerial, technical, and financial capacity for new public water supply systems. 42 U.S.C. § 300g-9. This capacity development strategy is also a required component for the department's ability to provide loan assistance to public water supply systems under the Drinking Water State Revolving Fund program. Id.; 42 U.S.C. § 300j-12. In 1999, as part of its state strategy, the department adopted Appendix A to Circulars DEQ-1 and DEQ-3, including a system budget table in Table A-1. This table summarizes a five-year projection of cash flow to properly operate and maintain the system.

Table A-1 was included in Circular DEQ-1 until rulemaking conducted in 2006. The reasons for its omission in that rulemaking could not be ascertained. The department now proposes to reinsert the table into Circular DEQ-1. Experience in administering the circular has shown that submissions that do not use Table A-1 may lack continuity, completeness, and clarity. Reinserting the table would help ensure that the required technical, managerial, and financial components have been adequately addressed, would improve the capacity development process for the submitting project engineer and state review engineer, and would allow the department to meet its federal obligations under the Safe Drinking Water Act.

5. A copy of the proposed Circular PWS-5 and Table A-1 may be viewed at the department's website using the following path:
<https://deq.mt.gov/News/publiccomment-folder/news-article>. Copies may also be obtained by contacting Jim Sutliff at (406) 444-0490, or Jim.Sutliff@mt.gov.

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 the Department of Environmental Quality, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or emailed to DEQGWUDISWRule2022@mt.gov, no later than 5:00 p.m., June 27, 2022. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. Aaron Pettis, attorney for the department, has been designated to preside over and conduct this hearing.

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

delivered to the department or may be made by completing a request form at any rules hearing held by the department.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed amendment to the above-stated rules and the proposed changes to PWS-5 and to Circular DEQ-1 will not significantly and directly impact small businesses.

Reviewed by:

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State May 17, 2022.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I and II, the amendment of	)	PROPOSED ADOPTION,
ARM 18.7.203, 18.7.204, and	)	AMENDMENT, AND REPEAL
18.7.206, and the repeal of 18.7.205)	
and 18.7.221 pertaining to Utility)	
Right-of-Way Occupancy)	

TO: All Concerned Persons

1. On June 22, 2022, at 9:30 a.m., the Department of Transportation will hold a public hearing via remote conferencing to consider the proposed adoption, amendment, and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following way:

Registration with Zoom may be made at the following link:

<https://mt-gov.zoom.us/meeting/register/tZclde-oqTkqH9Mp3O0IViFGtG4BTnH4im7k>

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on June 17, 2022, to advise us of the nature of the accommodation that you need. Please contact Steve Giard, Utility Section Manager, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6080; fax (406) 444-7254; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail sgiard@mt.gov.

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

NEW RULE I ELIGIBLE PROJECTS FOR LONGITUDINAL INTERSTATE USE (1) The department may enter a right-of-way use agreement for longitudinal occupancy of right-of-way along interstate highways for eligible project facilities which consist of a pipeline or fiber optic or other communications-type cables and associated infrastructure.

(2) An eligible project facility owner applicant may apply for a right-of-way use agreement through the department's Utility Permitting Administration System (UPAS) through the department's website at www.mdt.mt.gov or mdtupas.com. The right-of-way use agreement conditions, the department's administrative rules ARM 18.7.201 through 18.7.231, and the department's right-of-way utilities manual set forth the procedures and conditions for all eligible project facility installations and maintenance.

(3) An eligible project facility owner applicant must provide evidence that:

(a) construction and completion will result in a significant investment, a documented positive significant fiscal impact, or both, to the Montana economy within the first year of operation;

(b) the eligible facility is in the public interest; and

(c) the eligible facility is eligible to be approved by the federal highway administration (FHWA).

(4) The department's application review process shall be conducted in the order of receipt of applications and shall include consideration of:

(a) dig-once construction option to minimize construction disruptions and establish multiduct telecommunication systems for future use by multiple telecommunication companies and state and local governments;

(b) maximum occupancy of facilities and remaining availability of interstate right-of-way in the appropriate eligible facility corridor at the proposed project location;

(c) feasibility of proposed location;

(d) multiduct shared resource agreements which benefit the state or local governments;

(e) travelling public's safety and convenience; and

(f) sufficient maintenance area for proposed eligible facility location.

(5) The department shall approve or deny the application within 90 days of final approval by FHWA.

(6) The applicant must submit an application through UPAS, pay the \$100 non-refundable electronic convenience fee, receive preliminary FHWA approval, negotiate and execute the right-of-way use agreement (including determination of the appropriate fair market value payment amount), receive final FHWA approval and pay the fair market value of the portion of the right-of-way for the eligible project facility's location in the amount stated in the right-of-way use agreement prior to commencement of any construction work within the interstate right-of-way.

(7) Fair market value shall be determined as follows:

(a) The department will distinguish the various land uses and values for the entire interstate highway system by designating multiple segments as "rural" or "urban" zones and publish a map depicting the zones and associated values which may be updated as the department deems necessary.

(b) The unit of measure for fiber optic or other communications-type cable eligible projects on the interstate highways is a 6-foot-wide tract one mile long, or 31,680 square feet (6 feet x 5,280 feet/mile) per occupied conduit. The unit of measurement for pipeline eligible projects on the interstate highways is based on a 12-foot-wide tract one mile long, or 63,360 square feet (12 feet x 5,280 feet/mile) per pipeline.

(c) Unit value is the product of the unit square footage, the zone value per square foot, and an administratively determined lease rate of 10% annually. The department sets a 30-year term with the option to pay in a lump sum, standard incremental payments as determined by the department, or in-kind use deductions as negotiated in the right-of-way use agreement. Lump sum payments will be calculated using a net present value formula.

(d) The department shall deposit the revenues derived from the right-of-way use agreement in the state special revenue highway restricted account established in 15-70-126, MCA.

(8) Eligible facility corridors consisting of 6-foot-wide fiber optic or other communications-type cable corridors from edge of right-of-way toward centerline, and separate 12-foot-wide pipeline corridors from edge of fiber optic corridor toward centerline shall be established on interstate right-of-way. The department may require an eligible facility applicant to install a negotiated number of conduits providing increased capacity for future use by competitors or state or local governments under the following conditions:

(a) No less than four conduits are required. The applicant may provide justification for additional conduits to accommodate increased capacity.

(b) Subsequent conduit installation by any eligible facility is prohibited until all existing conduit has been fully occupied.

(c) Access points or vaults must be provided outside of highway access control at every metropolitan and rural community, and at each interchange for the length of the proposed eligible facility.

(d) The multiduct eligible facility shall be the eligible facility owner's property throughout the term of the right-of-way use agreement under the following conditions:

(i) A separate fair market value payment to the department is required for each occupied innerduct containing fiber optic cable which an eligible facility owner installs.

(ii) The eligible facility owner agrees to sell extra conduits on a competitively neutral and non-discriminatory basis to another eligible facility. A purchaser of extra conduit becomes the owner of the purchased portion and is solely responsible for future operation and maintenance of the purchased conduit.

(iii) The eligible facility owner's sale price must be based on recoupment of the installation costs only, calculated as the cost of the original installation prorated by the number of conduits installed. The eligible facility owner must retain adequate records of installation costs to allow the department to verify installation costs and review and approve the sale price prior to conclusion of the sale transaction.

(iv) A sale must grant an indefeasible right of use to another eligible facility, which right shall remain unless the installing eligible facility owner's right-of-way use agreement is terminated.

(v) Subsequent occupants installing fiber optic cable in an empty innerduct or conduit of the multiduct system must pay the full fair market value to the department as per payment options provided in this rule, in compliance with the department's then-current fair market value calculation, prior to installation.

(vi) There is no charge for empty innerduct, or conduit installed vertically within the same trench line along the interstate right-of-way provided, however, each separate trench line shall require a right-of-way use agreement.

(vii) All eligible facility owners, whether the initial installer or a subsequent conduit purchaser, must notify the department in writing prior to any sale of its eligible facility. After a sale, the purchaser is required to act as the single point of contact for all operations. The purchaser is required to negotiate a new right-of-way

use agreement with the department including appropriate fair market value payment or in-kind services agreement.

(9) Facilities installed under a right-of-way use agreement are not eligible under 60-4-401 through 60-4-403, MCA, for payment of relocation costs for department highway construction projects. The eligible facility owner agrees to waive all future rights to be reimbursed for relocation costs incurred should maintenance or construction of the interstate require relocation of the eligible facility. Should relocation of the eligible facility be required, the department makes no assurances nor assumes any liability to the eligible facility owner regarding whether the eligible facility will again be allowed to occupy the interstate right-of-way.

(10) Facilities installed under a right-of-way use agreement must comply with ARM 18.7.222 through 18.7.231 for general utility installation and maintenance requirements.

AUTH: 60-2-201, 60-3-101, 60-4-601, MCA

IMP: 60-2-201, 60-4-601, 60-5-101, 60-5-104, MCA

REASON: The 2021 Legislature enacted Chapter 439, Laws of 2021 (Senate Bill 392), codified at 60-4-601, MCA, An Act Providing for Grant of Right-of-Way by the Montana Department of Transportation for Certain Eligible Projects Along Interstate Highways; Establishing Criteria; Setting Timelines for Department Review; Requiring an Applicant to Pay the Department Certain Fees; Granting the Department Rulemaking Authority; and Providing an Immediate Effective Date. The bill became effective May 10, 2021. Proposed New Rule I is necessary to begin accommodation of eligible project pipeline or fiber optic or other communications-type cables and associated infrastructure within full access control (interstate) highway right-of-way which has not historically been allowed. MDT has historically considered the primary purpose of interstate highways to be movement of people and goods by vehicles, while accommodation of public or non-public utility facilities is considered a secondary benefit, which is subordinate to vehicular use. MDT seeks to keep the interstates operating efficiently without constant interruptions for facility utility work and to minimize risks imposed by facility lines in the roadway, which must now be done simultaneously with accommodation of eligible projects under SB 392.

Proposed New Rule I is necessary to provide information on the application process to be used for eligible project facilities and the payment of an application fee and fair market value right-of-way use agreement lease payments for use of interstate-controlled access right-of-way. The department projects the proposed initial fees and lease valuation payments for SFY 2023 will impact approximately one applicant, assuming 75 miles in the Billings District and 75 miles in the Butte District, resulting in a projected revenue increase of approximately \$8,752,110 as the 20% initial payment.

Proposed New Rule I is also necessary to implement SB 392, and to clarify necessary requirements for establishment of eligible project corridors, dig-once construction to minimize construction disruptions, and use of multiduct

telecommunication systems for future use by multiple telecommunication companies and state and local governments.

Proposed New Rule I is also necessary to clarify requirements for subsequent sale of broadband extra conduit on a competitively neutral basis for a price reasonably calculated to recoup installation costs. The department intends the proposed rule language on competitively neutral sale and installation recoupment pricing to encourage broadband fiber installation for greater access in Montana. The proposed rule language is intended to allow both large and small broadband fiber companies equal access to previously unavailable interstate right-of-way.

Proposed New Rule I is also necessary to establish that eligible project facilities installed in interstate right-of-way under SB 392 right-of-way use agreements are not eligible for relocation benefits should future highway construction projects require relocation of the facility.

NEW RULE II BROADBAND - FIBER OPTIC - TELECOMMUNICATIONS FACILITIES IN NON-INTERSTATE HIGHWAYS (1) The department may issue utility encroachment permits with applicable terms and conditions on a competitively neutral and nondiscriminatory basis for use of non-interstate federal aid highway system rights-of-way to telecommunications, fiber optic, and broadband facility owners for the purpose of installation of telecommunications equipment and facilities within state highway rights-of-way.

(2) Any broadband facilities placed on the non-interstate federal aid system highway right-of-way shall be placed in accordance with existing laws and the standards of the department.

(3) All broadband facilities, after having been installed or erected, shall at all times be subject to inspection. The department reserves the right to require future facility changes which may be necessary for highway construction or reconstruction projects, to ensure the safety of traffic on the highway. The cost of making such future changes, additions, repairs, and relocations shall be the sole responsibility of the facility owner.

(4) If the department has a highway improvement project which causes an interruption in service, any interruption in service as a result of the project is the sole responsibility of the facility owner. If the facility owner fails to relocate the facility within the deadline established by the department, any damage to the facility as part of construction of the highway project will be solely at the facility owner's expense.

(5) The proposed facilities, their operation, and their maintenance shall not interfere with the operation or maintenance of the facilities owned by other persons, firms, corporations, or government entities previously issued a utility encroachment permit or occupancy agreement. The proposed facilities shall not be dangerous to persons or property using or occupying the non-interstate highway or using facilities constructed under previously granted utility permits. It is the duty of the applicant to determine the existence and location of all facilities within the non-interstate highway right-of-way.

(6) Installations within the non-interstate highway right-of-way shall be established in accordance with applicable provisions contained in the following:

- (a) AASHTO Guide for Accommodating Utilities within Highway Right-of-Way;
- (b) Code of Federal Regulations, 23 CFR 645;
- (c) National Electrical Safety Code (C2); and
- (d) 1996 Federal Telecommunications Act.
- (7) Those facilities not included in (6) shall be established in accordance with accepted practice. Where standards of the department exceed those of the above-cited codes, the standards of the department shall apply. The department reserves the right to modify its standards, as may be required, if conditions warrant.
- (8) The applicant is the owner of the facility for which a utility encroachment permit is granted and is solely responsible for maintenance of the facility. A new utility encroachment permit and the permit provisions must be renegotiated with the department before the facility may be re-assigned to another company.
- (9) Any utility encroachment permit granted by the department is subject to revocation at any time.
- (10) Facilities installed under a utility encroachment permit are not eligible under 60-4-401 through 60-4-403, MCA, for payment of relocation costs for department highway construction projects. The facility owner agrees to waive all future rights to be reimbursed for adjustment costs incurred should maintenance or construction of the non-interstate federal-aid system highway require adjustment of the facility.

AUTH: 60-2-201, 60-3-101, 60-4-601, MCA
IMP: 60-2-201, 60-5-101, 60-5-104, MCA

REASON: Proposed New Rule II is necessary to encourage middle mile installation of fiber optic or telecommunications facilities in non-interstate right-of-way, to ensure fiber is made available to end mile—rural underserved or unserved—areas, which is not always possible by use of interstate highway right-of-way. New Rule II will encourage deployment of fiber optic and telecommunication facilities in non-interstate federal-aid state highways.

New Rule II is also necessary to establish application processes and requirements for issuance of utility encroachment permits for broadband, fiber optic, and telecommunications facilities in non-interstate federal-aid state highway right-of-way. New Rule II is necessary to distinguish telecommunication facility placement in non-interstate highway right-of-way from that established in New Rule I for interstate right-of-way under SB 392.

New Rule II is also necessary to establish the utility encroachment permit holder's responsibility for any future relocation due to future highway projects, requirements for installation standards, ownership and responsibility for maintenance, and lack of eligibility for future MDT relocation payments due to highway construction projects.

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

18.7.203 SCOPE AND APPLICATION (1) These regulations apply to all portions of federal-aid highway systems in Montana. ~~They and~~ establish requirements for occupancy of highway rights-of-way by:

(a) and (b) remain the same.

(2) Except as noted in ~~subsection (3) of this rule~~, [striking these because of ARM formatting style] these regulations shall apply to:

(a) through (e) remain the same.

(f) ~~Occupancy by utility type facilities that do not have a statutory right to occupy highway right-of-way, but are allowed under established use and~~ Occupancy by facilities which are not public utilities but may be allowed under encroachment permits granted and administered by the department.

(g) Longitudinal occupancy of non-interstate commission designated or state highway right-of-way by a non-public utility is contrary to department policy. Where such longitudinal occupancy is approved by the district administrator, it will only be by a subject to department review for maximum occupancy, remaining right-of-way availability, maintenance restrictions, safety, and all other considerations under these rules and shall only be approved, when feasible, via revocable encroachment permit.

(h) Longitudinal occupancy of interstate right-of-way is subject to ARM 18.7.204 and [NEW RULE I].

(3) remains the same.

(4) ~~Lands~~ Real property administered by the department in excess of highway right-of-way ~~are is~~ not subject to facility occupancy under these regulations. Easements or permits for use of such lands are obtained through the department's right-of-way bureau, land section supervisor, Helena, Montana real property must be requested through the department's right-of-way bureau.

AUTH: 60-2-201, 60-3-101, 60-4-402, 60-4-601, MCA

IMP: 60-2-201, 60-3-101, 60-4-402, 60-4-601, 60-5-101, 60-5-104, MCA

REASON: The proposed amendments to ARM 18.7.203 are necessary to make the rule consistent with 60-4-601, MCA (SB 392), allowing longitudinal use of interstate right-of-way for eligible projects. The proposed amendments will clarify the method by which the department will review applications for non-public utility encroachment permits for longitudinal use of non-interstate federal-aid highways. The proposed amendments are also necessary to allow right-of-way use agreements for eligible project facilities and utility encroachment permits for crossings on interstate highways under 60-4-601, MCA (SB 392). The proposed amendments are also necessary to revise outdated language to be consistent with the rule definitions of public and non-public utilities.

18.7.204 OCCUPANCY OF FULL CONTROLLED-ACCESS FACILITY RIGHT-OF-WAY (1) Occupancy of full controlled-access facility right-of-way ~~is contrary to department policy, however, occupancy may under right-of-way use agreements (interstate encroachment permit) may only be permitted in special cases where the utility facility owner shows that:~~

(a) for interstate eligible projects, all requirements of 60-4-601, MCA and [NEW RULE I] are met;

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

~~(c)~~ (d) the accommodation will not interfere with or impair the present use or future expansion of the full controlled-access facility; and

(d) remains the same but is renumbered (e).

(2) remains the same.

(3) Utilities ~~can~~ may be installed within the right-of-way of a crossroad over or under the full controlled-access facility, provided such installation is in compliance with all applicable rules, and provided the installation and servicing ~~can~~ may be accomplished without access from the through traffic facilities of the full controlled-access facility roadway or ramps.

AUTH: 60-3-101, 60-4-402, MCA

IMP: 60-3-101, 60-4-402, 60-4-601, MCA

REASON: The proposed amendment to ARM 18.7.204 is necessary to make the rule consistent with 60-4-601, MCA (SB 392), allowing longitudinal use of interstate right-of-way for eligible projects. The proposed amendments will clarify the use of other access-control facilities under utility encroachment permits or occupancy agreements, as distinguished from interstate longitudinal occupancy by eligible projects under a right-of-way use agreement and 60-4-601, MCA (SB 392).

18.7.206 PRIVATE AND PUBLIC UTILITIES – RELOCATION COSTS

(1) and (2) remain the same.

(3) Eligible project pipeline or fiber optic or other communications-type cables and associated infrastructure facilities under 60-4-601, MCA occupying interstate right-of-way under a right-of-way use agreement are not public or private utilities.

(3) and (4) remain the same but are renumbered (4) and (5).

(6) Eligible project pipeline or fiber optic or other communications-type cables and associated infrastructure under 60-4-601, MCA occupying interstate right-of-way under a right-of-way use agreement are not eligible for highway construction project relocation payment under federal or state statutes, regulations, or rules.

AUTH: 60-2-201, 60-3-101, 60-4-402, 60-4-601, MCA

IMP: 60-2-201, 60-3-101, 60-4-402, 60-4-403, 60-4-601, 60-5-101, 60-5-104, MCA

REASON: The proposed amendment to ARM 18.7.206 is necessary to make the rule consistent with 60-4-601, MCA (SB 392), allowing longitudinal use of interstate right-of-way for eligible project facilities. The proposed amendments will distinguish interstate longitudinal occupancy by eligible project facilities under a right-of-way use agreement and 60-4-601, MCA (SB 392) as a different type of facility than public or private utility. The proposed amendment will also clarify that these facilities are not eligible for highway construction project relocation payments, and they are not public utilities.

5. The following rules are proposed to be repealed:

18.7.205 SUPERSEDED REGULATIONS AND PERMITS

AUTH: 60-3-101, 60-4-402, MCA

IMP: 60-3-101, 60-4-402, MCA

REASON: The repeal of ARM 18.7.205 is necessary because the superseded regulations and permits cited in the rule no longer exist, and the rule is therefore archaic.

18.7.221 STANDARDS AND PROCEDURES

AUTH: 60-3-101, 60-4-402, MCA

IMP: 60-3-101, 60-4-402, MCA

REASON: The repeal of ARM 18.7.221 is necessary because the rule is archaic and refers to procedures which were superseded in 1972.

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 Steve Giard, Utility Section Manager, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; fax (406) 444-7254 or e-mail sgiard@mt.gov, and must be received no later than 5:00 p.m., June 24, 2022.

7. A Department of Transportation designee will preside over and conduct this hearing.

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

9. An electronic copy of this proposal notice is available on the Department of Transportation website at www.mdt.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 392 was contacted by email and U.S. Mail on October 22, 2021.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will significantly and directly impact small businesses.

12. With regard to the requirements of 2-15-142, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not have direct tribal implications.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Malcolm "Mack" Long
Malcolm "Mack" Long
Director
Department of Transportation

Certified to the Secretary of State May 17, 2022.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 23.13.102, 23.13.702,) PROPOSED AMENDMENT
23.13.703, 23.13.704, 23.13.706,)
23.13.719, and 23.13.721 pertaining)
to the certification of public safety)
officers)

TO: All Concerned Persons

1. On July 13, 2022, at 10:00 a.m., the Public Safety Officers Standards and Training (POST) Council will hold a public hearing in Auditoriums East and West at the Montana Department of Transportation building, 2701 Prospect Avenue, at Helena, Montana, to consider the proposed amendment of the above stated rules.

2. The POST Council 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 POST Council no later than 4:00 p.m. on July 8, 2022, to advise us of the nature of the accommodation that you need. Please contact Katrina Bolger, POST Council, 2260 Sierra Road East, East Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov.

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

23.13.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) remains the same.

(2) "Case status committee" is a three-member committee of the POST Council, appointed by the chair of the council. The council chair shall designate a chair of the case status committee. The case status committee's purpose is to determine whether allegations of misconduct by a public safety officer should be investigated by POST staff, to determine whether a certificate sanction is appropriate, to determine the appropriate sanction to a certificate upon a finding of misconduct, and to review other proposed actions at the request of the director. The director will act based upon a majority vote of the case status committee.

(2) through (25) remain the same but are renumbered (3) through (26).

(27) "Sexual misconduct" is defined as:

(a) any sexual activity, contact, or communication which occurs while the officer is on duty;

(b) any sexual contact without consent as defined in 45-5-501(1)(b), MCA, without regard to whether such violation results in criminal charges or a conviction,

including gratuitous physical contact with suspects or other civilians, such as unnecessary searches, frisks, or pat-downs;

(c) any sexual activity, contact, or communication, on or off duty, which the officer facilitates with public safety agency property, resources, or information systems;

(d) procuring, observing, or disseminating pornographic or sexually offensive material either on duty or using department property or resources, when such procurement, observation, or dissemination is not related to the officer's official duties;

(e) engaging in sexual harassment as defined in applicable laws; or

(f) any other sexual conduct which, whether committed in the officer's capacity as an officer or otherwise, is prejudicial to the administration of justice or reflects adversely on the employing authority's integrity or the officer's honesty, integrity, or fitness as an officer.

(26) through (28) remain the same but are renumbered (28) through (30).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: In November of 2021, POST Bureau staff met with the Montana Police Protective Association (MPPA). MPPA expressed concern that stakeholders did not fully understand the role of the case status committee of the POST Council, a committee which has been in place since 2013, and with whom the POST director confers on cases. Currently, the committee's role is defined in POST's procedures but not in administrative rule. POST and MPPA agreed that defining the committee and its duties in rule would address this concern and clarify the committee's role.

During a routine review of POST's rules, contested case counsel for POST identified that POST's rules did not specifically provide for certification sanctions based upon sexual misconduct. POST has agreed that this type of conduct should be defined and sanctionable, especially because, since March of 2020, agency administrators are required to report misconduct. This change provides additional clarity regarding the types of conduct which must be reported to POST.

23.13.702 GROUNDS FOR DENIAL, SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) ~~The executive director or the council will consider~~ Any legitimate allegation made against any public safety officer that may result in the denial, sanction, revocation, or suspension of that officer's certification must be considered by either:

(a) the case status committee and the executive director; or

(b) the council.

(2) through (3)(k) remain the same.

(l) the use of excessive or unjustified force in conjunction with official duties;

or

(m) engaging in sexual misconduct as defined in these rules; or

(m) remains the same but is renumbered (n).

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: See reason for amendment to ARM 23.13.102.

23.13.703 PROCEDURE FOR MAKING AND RECEIVING ALLEGATIONS OF OFFICER MISCONDUCT AND FOR INFORMAL RESOLUTION OF THOSE ALLEGATIONS BY THE DIRECTOR (1) through (4) remain the same.

(5) After the employing authority has been notified and given the opportunity to act, the director or POST staff may accept an allegation to be presented to the case status committee. If an allegation is received from an employing agency, the executive director may, if appropriate under the circumstances, send a "Letter 1" (as described in the POST Council's policy and procedure adopted under (1)) to the officer prior to consultation with the case status committee, provided the director notify the committee of the Letter 1 as soon as practicable.

(a) through (d) remain same.

(6) remains the same.

(7) After an allegation has been received or has been initiated by the director, the director, in consultation with the case status committee and contested case counsel for POST, will correspond with the respondent in writing.

(a) through (c) remain the same.

(8) After an allegation is made by or filed with the director, and upon a majority vote of the case status committee, the director, contested case counsel for POST, or other POST staff or designees will investigate the complaint.

(9) Following the review and investigation of an allegation, communication with the respondent, communication with the employing authority, and consultation with counsel for POST, and based upon a majority vote of the case status committee, the director may take any appropriate action, including but not limited to the following:

(a) through (f) remain the same.

(10) If a review of the conduct of an officer is pending before any court, council, tribunal, or agency, the director may, as a matter of discretion, stay any proceedings for denial, sanction, suspension, or revocation pending before the council, no matter what stage or process they have reached, until the other investigation or proceeding is concluded. If the case has already been assigned to a hearing examiner, the hearing examiner must grant a stay based on an application by the director or counsel for POST. The director will notify the case status committee of the stay as soon as practicable.

(11) remains the same.

AUTH: 2-4-201, 2-15-2029, MCA
IMP: 2-4-201, 2-15-2029, 44-4-403, MCA

REASON: See reason for amendment to ARM 23.13.102. This specific rule change is necessary to address when the director should consult with the committee after receipt of an allegation.

23.13.704 REQUESTS FOR A FORMAL CONTESTED CASE HEARING UNDER MAPA (1) ~~Any person aggrieved by a decision of the director or a decision of the council, other than a decision by the director to deny, sanction, suspend, or revoke a certificate, that is not a final decision following a contested case hearing, as provided in 2-4-623, MCA, may request a contested case hearing before the council by following the procedures set forth in Title 2, chapter 4, part 6, MCA.~~

(2) remains the same but is renumbered (1).

(2) Any public safety officer or employing authority aggrieved by a decision of the director, other than a decision by the director to deny, sanction, suspend, or revoke a certificate, that is not a final decision following a contested case hearing, as provided in 2-4-623, MCA, may request the denial be placed on the agenda for consideration by the council at the council's next regularly scheduled meeting.

AUTH: 2-15-2029, MCA

IMP: 2-4-201, 2-15-2029, 44-4-403, MCA

REASON: Section 44-4-403, MCA provides an opportunity for contested case hearing only for a public safety officer whose certification or recertification has been denied, suspended, or revoked. This change is necessary to conform to the statute and ensure individuals receive timely responses from the council on issues that do not involve denial, suspension, or revocation of certification or recertification and thus do not qualify for a contested case hearing.

23.13.706 CONTESTED CASES, EMERGENCY SUSPENSION OF A LICENSE (1) Pursuant to 2-4-631(3), MCA, if the director or the council determines that public health, safety, or welfare requires emergency action, the director or council may immediately suspend a certification. The order must include findings justifying emergency action, and regular proceedings must be promptly initiated. If the director takes emergency action to suspend a certification, the director will inform the case status committee as soon as practicable and will take further action based upon a majority vote of the committee.

AUTH: 2-4-201, 2-15-2029, MCA

IMP: 2-4-631, 44-4-403, MCA

REASON: See reason for amendment to ARM 23.13.102. This specific rule change is necessary to address consultation with the committee where the director takes emergency action to suspend a certification.

23.13.719 DECISION AND ORDER, STAYS (1) through (6) remain the same.

(7) Case status committee members may not participate in deliberations or any decision of the full council regarding the denial, revocation, or suspension of an officer's POST certification, unless the committee member did not participate in the committee's decisions on the matter and did not participate in committee meetings at which the matter was discussed.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: See reason for amendment to ARM 23.13.102. This specific rule change is necessary to avoid any appearance of bias on the part of any council member voting on a hearing examiner's order.

~~23.13.721 APPEALS (1) A party, other than the council, adversely affected by a final POST Council decision rendered after a contested case proceeding, may appeal to the Montana Board of Crime Control pursuant to ARM 23.14.1004 and 44-4-403(3), MCA. The decision of the Montana Board of Crime Control is the final agency decision subject to judicial review pursuant to 2-4-702, MCA.~~

~~(2) The council may appeal to the Board of Crime Control under the conditions provided in Title 2, chapter 4, part 6, MCA.~~

AUTH: 2-15-2029, MCA
IMP: 2-4-201, 2-15-2029, 44-4-403, MCA

REASON: During the 2021 Legislative Session, the Legislature amended 44-4-403, MCA, to remove the requirement that a decision of POST be reviewed by the Board of Crime Control. This change is necessary to comport with the statute.

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: Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov, and must be received no later than 5:00 p.m., August 10, 2022.

5. J. Stuart Segrest, Attorney at Law, has been designated to preside over and conduct this hearing.

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

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

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 council has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

Sheriff Jesse Slaughter
Chairman
Public Safety Officers Standards and
Training Council

/s/ Derek Oestreicher
Derek Oestreicher
Rule Reviewer

/s/ David M.S. Dewhirst
David M.S. Dewhirst
Solicitor General
Montana Department of Justice

Certified to the Secretary of State May 17, 2022.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.101.413, 24.225.301,	)	PROPOSED AMENDMENT AND
24.225.401, 24.225.511, and	)	ADOPTION
24.225.550 and the adoption of NEW)	
RULES I and II regarding licensure of)	
veterinary technicians)	

TO: All Concerned Persons

1. On June 21, 2022, at 8:30 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and adoption of 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/82306975599>
Meeting ID: 823 0697 5599, Passcode: 809185
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 823 0697 5599, Passcode: 809185

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Veterinary Medicine (board) no later than 5:00 p.m., on June 14, 2022, to advise us of the nature of the accommodation that you need. Please contact Kelly Welsh, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; Montana Relay 711; facsimile (406) 841-2305; or dlibsdvet@mt.gov.

3. GENERAL REASONABLE NECESSITY: The board and department determined it is reasonably necessary to amend and adopt rules to implement the provisions of Chapter 392, Laws of 2021, Senate Bill 106, an act providing for the licensure of veterinary technicians, establishing licensure requirements, and providing the board rulemaking authority. The bill was signed by the Governor on April 29, 2021, and will become effective January 1, 2023.

The department is amending ARM 24.101.413 to establish a licensure renewal date for veterinary technicians. Following passage of the legislation, the board established a rules committee that met seven times to set licensure standards with stakeholder input. The board received input from other Montana agencies, humane societies, professional associations, and other state veterinary boards. The

board is amending and adopting rules to establish licensure requirements and fees, continuing education standards, unprofessional conduct parameters, and scope of practice for veterinary technicians. Authority and implementation citations are amended to incorporate the relevant statutes of Senate Bill 106. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The department is proposing to amend the following rule. The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (4) remain the same.

(5) The following are renewal dates for the professions and occupations listed:

(a) through (al) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(am)	Veterinary Medicine	Euthanasia Agency	Annually	May 30
		Embryo Transfer Technician	Annually	November 1
		Euthanasia Technician	Annually	May 30
		Veterinarian	Annually	November 1
		<u>Veterinary Technician</u>	<u>Annually</u>	<u>November 1</u>

(6) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141

5. The board is proposing to amend the following rules. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.225.301 DEFINITIONS (1) through (7) remain the same.

(8) "LVT" means a licensed veterinary technician under Title 37, chapter 18, MCA.

(8) and (9) remain the same but are renumbered (9) and (10).

(11) "Support personnel" means any unlicensed person employed by a licensed veterinarian who assists a licensed veterinarian in the practice of veterinary medicine. ~~The term does not include embryo transfer technicians.~~

(11) and (12) remain the same but are renumbered (12) and (13).

AUTH: 37-18-202, 37-18-603, 37-18-701, MCA

IMP: 37-18-102, 37-18-104, 37-18-603, 37-18-701, MCA

REASON: After discussions with stakeholders and licensees, the board determined it is reasonably necessary to distinguish that "support personnel" are unlicensed, and therefore do not include embryo transfer technicians or LVTs. The board believes that clarification of this distinction will allow veterinarians to exercise the appropriate amount of supervision over their employees.

24.225.401 FEE SCHEDULE

(1) through (3) remain the same.

(4) Veterinary technician

(a) application

150

(b) renewal

50

(4) and (5) remain the same but are renumbered (5) and (6).

AUTH: 37-1-134, 37-18-202, 37-18-603, 37-18-701, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-18-302, 37-18-603, 37-18-701, MCA

REASON: It is reasonably necessary to set LVT application and renewal fees to comply with 37-1-134, MCA, by providing the amount usually needed for the operation of the board in providing similar regulatory services. The board considered current processes and associated costs to license other technicians. The board estimates the proposed fees will affect approximately 200 new and 200 renewing LVTs and increase annual revenue by \$40,000.

24.225.511 CONTINUING EDUCATION (1) Veterinarians and LVTs are required to obtain a total of 20 continuing education (CE) hours prior to renewal on November 1 of even-numbered years. The 20 hours must be obtained during the 24-month period prior to renewal in even-numbered years.

(a) through (9) remain the same.

AUTH: 37-1-131, 37-1-319, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, MCA

24.225.550 UNPROFESSIONAL CONDUCT (1) ~~For the purposes of implementing the provisions of 37-1-319, MCA, the~~ The board defines "unprofessional conduct" as follows:

~~(a) violation of any state or federal statute or administrative rule regulating the practice of veterinary medicine, including any statute or rule defining or establishing standards of patient care or professional conduct or practice, or any rules established by any health agency or authority of the state or a political subdivision of those entities;~~

~~(b) resorting to fraud, misrepresentation, or deception in the examination or treatment of an animal, or in billing or reporting to a person, company, institution, or agency;~~

(c) ~~(a)~~ failing to provide care in a competent and humane manner consistent with prevailing standards of practice for the species of animal and the professed area of expertise of the veterinarian or LVT. Veterinarians Licensees must meet the currently accepted standards of practice for the profession of veterinary medicine as described under:

(i) through (iii) remain the same.

~~(d) possession, use, addiction to, prescription for use, diversion, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, or violation of any drug law;~~

~~(e) dispensing or prescribing a veterinary prescription drug or veterinary feed directive drug without a valid VCPR;~~

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

~~(h) offering, undertaking, or agreeing to cure or treat disease or affliction by a secret method, procedure, treatment, or the treating, operating, or prescribing for any health condition by a method, means, or procedure that the licensee refuses to divulge upon demand from the board;~~

~~(i) failing to adequately supervise auxiliary staff to the extent that the patient's physical health or safety is at risk;~~

~~(j) practicing veterinary medicine after the practitioner's license is expired, terminated, revoked, or suspended;~~

(k) remains the same but is renumbered (d).

~~(l) (e)~~ abandoning, neglecting, or otherwise physically abusing a patient once the licensed veterinarian has established a valid VCPR and undertaken treatment of the patient;

~~(m) making public any information without consent as per ARM 24.225.514;~~

~~(n) (f)~~ violation of professional ethical standards by making public false or misleading negative information about another veterinarian's or LVT's professional standing or reputation;

~~(o) (g)~~ identifying oneself as a member of an American Veterinary Medical Association (AVMA)-recognized specialty organization or any other veterinary association if such certification has not been awarded and maintained, or using terms implying a specialty in a false and misleading manner;

~~(p) (h)~~ failure to disclose records in accordance with ARM 24.225.514 ~~in a reasonable period of time;~~

~~(q) (i)~~ failure to report to the proper authorities cruel or inhumane treatment to animals, if the ~~veterinarian~~ licensee has direct knowledge of the cruel or inhumane treatment;

~~(r) (j)~~ failure to refer if a client requests a referral; ~~or~~

~~(s) failure to obtain the client's consent before placing an animal under anesthesia, performing any surgical procedure, or transporting the animal to another facility, except in emergency situations.~~

(k) failure to follow the National Association of State Public Health Veterinarians Compendium of Animal Rabies Prevention and Control (NASPHV). The board adopts and incorporates by reference, Vol 248, No. 5, effective March 1,

2016. A copy may be obtained through the publisher online-
<http://www.nasphv.org/documentsCompendiaRabies.html>; 2016 Compendium.

(2) In addition to the provisions outlined in (1), it is unprofessional conduct for a licensed veterinarian to:

(a) dispense or prescribe a veterinary prescription drug or veterinary feed directive drug without a valid VCPR;

(b) offer, undertake, or agree to cure or treat disease or affliction by a secret method, procedure, treatment, or the treating, operating, or prescribing for any health condition by a method, means, or procedure that the licensee refuses to divulge upon demand from the board;

(c) fail to obtain the client's consent before placing an animal under anesthesia, perform any surgical procedure, or transport the animal to another facility, except in emergency situations;

(d) fail to adequately supervise licensed veterinary technicians and support personnel.

(3) In addition to the provisions outlined in (1), it is unprofessional conduct for an LVT to:

(a) practice beyond the scope of practice described in [NEW RULE II], including the following: [can I make this a colon?]

(i) failing to adequately follow direction of a supervising veterinarian;

(ii) undertaking procedures or performing treatment that has not been authorized by the supervising veterinarian;

(iii) undertaking procedures or perform treatment that the LVT is not trained for or competent to perform;

(iv) dispensing a veterinary prescription drug or veterinary feed directive drug without a valid VCPR established by a licensed veterinarian; and

(v) failing to obtain the client's consent before placing an animal under anesthesia, performing any procedure, or transporting the animal to another facility, except in emergency situations;

(b) offer, undertake, or agree to cure or treat disease or affliction by a secret method, procedure, treatment, or the treating, for any health condition by a method, means, or procedure that the licensee refuses to divulge upon demand from the board;

(c) supervise or direct support personnel to perform veterinary medicine health care tasks which have not been ordered by the licensed veterinarian.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-18-202, MCA

IMP: 37-1-131, 37-1-136, 37-1-316, 37-1-319, 37-18-309, MCA

REASON: The board is amending this rule to incorporate standards of conduct for LVTs to implement Senate Bill 106. The board is further amending this rule to reorganize for clarity and ease of use by clearly setting forth which conduct applies to veterinarians, LVTs, or both.

It is reasonably necessary to strike (1)(a), (b), and (d), as the provisions are adequately addressed in statute at 37-1-316, MCA. The board is striking (1)(j) as it is addressed in 37-18-301, MCA.

The board is adding (1)(k) to add the failure to follow the NASPHV standards on animal rabies and control as unprofessional conduct. Stakeholders and other state agencies requested the board to develop a baseline for rabies vaccine administration.

6. The board is proposing to adopt the following new rules:

NEW RULE I VETERINARY TECHNICIAN LICENSE REQUIREMENTS—ORIGINAL APPLICANTS (1) Applicants must meet the following education requirements:

(a) be a graduate of a program accredited by the American Veterinary Medical Association (AVMA); or

(b) demonstrate a minimum of 4500 hours of on-the-job training under the supervision of a veterinarian licensed and residing in Montana.

(2) Applicants must pass the Veterinary Technician National Exam (VTNE).

(3) Applicants must pass the jurisprudence examination prescribed by the board covering the statutes and rules governing the practice of veterinary medicine in Montana:

(a) applicants must pass the jurisprudence examination with a score of 90 percent or greater;

(b) applicants may not take the exam more than three times unless approved by the board to retake the examination. Applicants wishing to retake the exam for a fourth time must submit a written request to the board.

AUTH: 37-18-701, MCA

IMP: 37-18-701, MCA

NEW RULE II LVT SCOPE OF PRACTICE—SUPERVISION (1) Under immediate supervision, an LVT may perform:

(a) placement of abdominal, thoracic, or percutaneous endoscopic gastrostomy (PEG) tubes;

(b) placement of epidural and intraosseous catheters;

(c) floating of equine teeth. All other equine dental operations must be performed by a licensed veterinarian.

(2) Under direct supervision, an LVT may perform:

(a) induction of general anesthesia;

(b) non-emergency endotracheal intubation;

(c) regional anesthesia, including paravertebral blocks, epidurals, local blocks;

(d) dental procedures including:

(i) the removal of calculus, soft deposits, plaque, and stains;

(ii) polishing of teeth;

(e) blood or blood component collection, preparation, and administration for transfusion for blood banking purposes;

(f) placement of tubes including, but not limited to, gastric, nasogastric, and nasoesophageal;

(g) application of casts, splints, and slings for the immobilization of fractures;

- (h) fluid aspiration from a body cavity or organ (i.e., cystocentesis, thoracocentesis, abdominocentesis);
- (i) suturing of an existing surgical skin incision;
- (j) suturing a gingival incision.
- (3) Under indirect supervision, an LVT may perform:
 - (a) administration of controlled substances, unless prohibited by government regulations, including administration of controlled substances for the purposes of euthanasia, following current American Veterinary Medical Association (AVMA) guidelines for evaluating euthanasia methods;
 - (b) imaging including, but not limited to, radiography, ultrasonography, computed tomography, magnetic resonance imaging, and fluoroscopy and the administration of radio-opaque agents/materials;
 - (c) collection of urine by bladder expression, catheterization (unobstructed), and insertion of an indwelling urinary catheter;
 - (d) monitoring including, but not limited to, electrocardiogram (ECG), blood pressure, carbon dioxide (CO₂), and blood oxygen saturation;
 - (e) laser therapy and animal rehabilitation therapies;
 - (f) ocular tonometry, Schirmer tear test, and fluorescein stain application;
 - (g) application of splints and slings for the temporary immobilization of fractures;
 - (h) general sedation, maintenance, and recovery.

AUTH: 37-18-102, 37-18-104, 37-18-702, MCA

IMP: 37-18-102, 37-18-104, 37-18-702, MCA

REASON: Senate Bill 106 requires the board establish which veterinary practices may be performed by an LVT under direct, immediate, or indirect supervision. After considering stakeholder input during several public meetings, the board is adopting New Rule II to implement the statutory directive.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdvet@mt.gov, and must be received no later than 5:00 p.m., June 24, 2022.

8. An electronic copy of this notice of public hearing is available at <http://boards.bsd.dli.mt.gov/vet>. Although the department strives to keep its websites accessible at all times, concerned persons should be aware that websites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a website do not excuse late submission of comments.

9. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons wishing to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies the intent to

receive notices of all board administrative rulemaking proceedings or a particular subject matter. The request must indicate whether e-mail or standard mail is preferred and may be sent or delivered to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to (406) 841-2305; e-mailed to dlibsdrvvet@mt.gov; or by completing a request form at any rules hearing held by the board.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on April 11, 2022, by electronic mail.

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

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

BOARD OF VETERINARY MEDICINE
BARBARA CALM, D.V.M.,
PRESIDENT

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

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 17, 2022.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through IX, amendment of	)	PROPOSED ADOPTION,
ARM 37.106.2802, 37.106.2803,	)	AMENDMENT, AND REPEAL
37.106.2804, 37.106.2805,)	
37.106.2809, 37.106.2810,)	
37.106.2814, 37.106.2815,)	
37.106.2816, 37.106.2817,)	
37.106.2821, 37.106.2822,)	
37.106.2823, 37.106.2824,)	
37.106.2829, 37.106.2835,)	
37.106.2836, 37.106.2838,)	
37.106.2847, 37.106.2849,)	
37.106.2854, 37.106.2855,)	
37.106.2860, 37.106.2866,)	
37.106.2875, 37.106.2885,)	
37.106.2896, 37.106.2904, and)	
repeal of ARM 37.106.2886)	
pertaining to assisted living rules)	
related to background checks and)	
category D endorsement)	

TO: All Concerned Persons

1. On June 16, 2022, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption, amendment, and repeal 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/84666688132?pwd=dXpkak5PNIRtQVIYSEtkcGZYTDE2UT09>, meeting ID: 846 6668 8132 and password 311582; or

(b) Dial by telephone +1 646 558 8656, meeting ID: 846 6668 8132. Find your local number: <https://mt-gov.zoom.us/j/84666688132?pwd=dXpkak5PNIRtQVIYSEtkcGZYTDE2UT09>.

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 June 2, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I CATEGORY D: CONSTRUCTION (1) Category D services must be provided in a secured care unit and meet all requirements in ARM 37.106.316.

(2) A category D facility will be either:

(a) a stand-alone secured facility; or

(b) a separate, secured unit attached to a category A, B, and/or C facility.

(3) A category D unit attached to a category A, B, and/or C facility must have a separate entrance/exit and impenetrable doors used to separate the category D unit from the other units.

(4) The facility must devise a policy on how it plans to maintain security of the facility or unit.

(5) A category D facility or unit must have at least one seclusion room for every 24 residents. The room must meet the requirements set forth in [NEW RULE IX].

(6) A category D facility or unit must not use automatic door closures unless required. If required, such closures must be mounted on the public side of the door.

(7) All hardware and lights used in a category D facility or unit must be tamper-proof.

(8) All resident room doors must include a sight window.

(9) No more than one client must reside in a resident room.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE II CATEGORY D: ADMINISTRATOR QUALIFICATIONS (1) In addition to requirements in ARM 37.106.2873, an administrator for a category D facility must have a least three years of experience in the field of mental health.

(2) Of the 16 hours of annual continued education training required in ARM 37.106.2814, eight hours must be in the field of mental health.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE III CATEGORY D: DISCLOSURE TO CATEGORY D

RESIDENTS (1) Each assisted living category D facility or unit must, prior to admission, inform the resident or resident's legal representative in writing of the following:

(a) the overall philosophy and mission of the facility regarding meeting the needs of residents with mental illness and the form of care or treatment offered;

(b) the process and criteria for admission and discharge;

(c) the process used for resident assessments;

(d) the process used to establish and implement a health care plan, including how the health care plan will be updated in response to changes in the resident's condition;

(e) staff training and continuing education practices;

- (f) the physical environment and design features appropriate to support the functioning of mentally disabled residents, including features for the resident who requires seclusion and restraint;
 - (g) the frequency and type of resident activities; and
 - (h) any additional costs of care or fees.
- (2) The facility must obtain from the resident or resident's legal representative a written acknowledgment that the information specified was provided. A copy of this written acknowledgment must be kept as part of the permanent resident file.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE IV CATEGORY D: STAFF (1) A category D facility must have the following staff:

- (a) a registered nurse (RN) must be on duty or on call and available physically to the facility within one hour;
- (b) a full-time licensed mental health professional who must be site-based; and
- (c) direct care staff in sufficient number to meet the needs of the residents.

Direct care staff must be certified nursing assistants.

- (2) In addition to requirements in ARM 37.106.2816, all staff must:
- (a) be at least 18 years old;
 - (b) complete an FBI fingerprint background check upon hiring;
 - (c) complete four hours of annual training related to mental health;
 - (d) complete training requirements in ARM 37.106.2908; and
 - (e) complete training on de-escalation techniques and methods of managing resident behaviors.
- (3) All staff must remain awake, fully dressed, and available on the unit at all times when they are on duty.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE V CATEGORY D: RESIDENT ASSESSMENTS A category D facility must obtain or conduct three types of resident assessments for each resident:

- (1) Prior to move in, the facility shall obtain the court determination documentation required in 50-5-224(3), MCA, as well as a full medical history and physical and mental health assessment.
- (2) A resident needs assessment must be completed within seven days prior to admission to facility. The assessment must be reviewed/updated quarterly, and upon significant change in status.
- (3) The administrator, or designee, will request and retain copies of the healthcare assessment and written order for care completed monthly by the practitioner as defined in 50-5-226(5), MCA.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE VI CATEGORY D: HEALTH CARE PLAN (1) In addition to requirements in ARM 37.106.2875, the health care plan for a category D resident must include:

- (a) de-escalation techniques individualized to the resident;
- (b) circumstances when the resident may need to be isolated from other residents;
- (c) behaviors and/or situations in which a staff member may need to obtain orders for restraints and/or seclusion; and
- (d) the requirements listed in ARM 37.106.2905.

(2) The health care plan must be reviewed and updated quarterly and upon significant change in status.

(3) Each direct care staff must document that they have reviewed and are capable of implementing each resident's health care plan.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE VII CATEGORY D: MEDICATION USE AND PHYSICIAN ORDERS (1) All category D residents must be assessed on their ability and be encouraged to self-administer their own medication. If a resident is unable or unwilling to self-administer his or her medication, a licensed nurse shall administer all medication and the resident must be classified as a category B resident.

(2) When a resident refuses a medication, the resident's practitioner shall be notified within 24 hours and notification documented.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE VIII CATEGORY D: DISCHARGE (1) A comprehensive discharge plan directly linked to the behaviors and symptoms that resulted in admission and estimated length of stay must be developed upon admission.

(2) A resident's diversion order is discontinued when:

(a) the resident and facility choose to allow continued residency; a resident needs assessment must be completed to determine category and placement within the facility;

(b) the resident chooses not to remain in the facility; the facility shall issue a 30-day notice and conduct discharge planning. Discharge planning must include involvement from community resources.

(3) A resident may be involuntarily discharged in less than 30 days if the resident:

- (a) has a medical emergency;
- (b) is suffering from an acute psychotic episode; or
- (c) commits a crime that causes serious bodily injury, death, or property damage.

(4) All discharges must be discussed with the resident's practitioner to ensure collaboration on a safe and appropriate discharge location.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE IX CATEGORY D: SECLUSION ROOM REQUIREMENTS

(1) A category D facility or unit must have at least one room designated to be used for seclusion for every 24 beds.

(2) The location of these rooms must facilitate staff observation and monitoring of residents in these rooms.

(3) Seclusion rooms may only be used by one resident at a time.

(4) Seclusion rooms must:

(a) be a minimum of 60 square feet, and a minimum of 80 square feet if restraint beds are used;

(b) be a minimum length of 7 feet and maximum wall length of 11 feet;

(c) be a minimum height of 9 feet;

(d) be accessed by an anteroom or vestibule that provides direct access to a toilet room;

(e) have door openings to the anteroom and toilet room with a minimum clear width of 3 feet 8 inches;

(f) be constructed to prevent hiding, escape, injury, or suicide;

(g) have walls designed to withstand direct and forceful impact and have materials that meet Class A or Class B finishes as defined by the 2012 National Fire Protection Association (NFPA) 101;

(h) have monolithic ceilings;

(i) not contain outside corners or edges;

(j) have doors that swing out, have a clear opening of 3 feet 8 inches, and permit staff observation through a vision panel, while maintaining provisions for privacy;

(k) have tamper resistant fixtures, such as light fixtures, vent covers, and cameras;

(l) have electrical switches and outlets that are restricted within the seclusion room; and

(m) have door lever handles that point downward when in the latched or unlatched position, except for specifically designed anti-ligature hardware.

(5) A licensed nurse must provide residents with constant one-on-one supervision when in the seclusion room.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

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

37.106.2802 PURPOSE (1) The purpose of these rules is to establish standards for assisted living A, B ~~and~~ C, and D facilities. Assisted living facilities are a setting for frail, elderly, or disabled persons which provide supportive health

and service coordination to maintain the residents' independence, individuality, privacy, and dignity.

(2) An assisted living facility offers a suitable living arrangement for persons with a range of capabilities, disabilities, frailties, and strengths. In general, however, assisted living is not appropriate for individuals who are incapable of responding to their environment, expressing volition, interacting, or demonstrating any independent activity. For example, individuals in a persistent vegetative state who require long term nursing care should not be placed or cared for in an assisted living facility.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2803 APPLICATION OF RULES (1) Category A facilities must meet the requirements of ARM 37.106.2801 through ~~37.106.2874~~ 37.106.2866.

(2) Category B facilities must meet the requirements of ARM 37.106.2801 through ~~37.106.2886~~ 37.106.2885.

(3) Category C facilities must meet the requirements of ARM 37.106.2801 through ~~37.106.2886~~ 37.106.2885 and ARM 37.106.2891 through 37.106.2898.

(4) Category D facilities must meet the requirements of ARM 37.106.2801 through 37.106.2885 and [NEW RULES I through IX].

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2804 APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of ARM Title 37, chapter 106, subchapter ~~27~~ 28, the terms of subchapter ~~27~~ 28 will apply to assisted living facilities.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2805 DEFINITIONS The following definitions apply in this subchapter:

(1) "Activities of daily living (ADLs)" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(2) "Administrator" means the person designated on the facility application or by written notice to the department as the person responsible for the daily operation of the facility and for the daily resident care provided in the facility.

(3) "Advance directive" means a written instruction, such as a living will, a do not resuscitate (DNR) order, or durable power of attorney (POA) for health care, recognized under state law relating to the provision of health care when the individual is incapacitated.

(4) "Ambulatory" means a person is capable of self mobility, either with or without mechanical assistance. If mechanical assistance is necessary, the person is considered ambulatory only if they can, without help from another person, transfer,

safely operate, and utilize the mechanical assistance, exit and enter the facility, and access all common living areas of the facility.

(5) "Assisted living facility" is defined at 50-5-101, MCA.

(6) "Change of ownership" means the transfer of ownership of a facility to any person or entity other than the person or entity to whom the facility's license was issued, including the transfer of ownership to an entity which is wholly owned by the person or entity to whom the facility's license was issued.

(7) "Department" means the Department of Public Health and Human Services.

(8) "Direct care staff" means a person or persons who directly assist residents with personal care services and medication. It does not include housekeeping, maintenance, dietary, laundry, administrative, or clerical staff at times when they are not providing any of the above-mentioned assistance. Volunteers can be used for direct care, but may not be considered part of the required staff.

(9) "Health care plan" means a written resident specific plan identifying what ongoing assistance with activities of daily living and health care services is provided on a daily or regular basis by a licensed health care professional to a category B or C, or D resident under the orders of the resident's practitioner. Health care plans are developed as a result of a resident assessment performed by a licensed health care professional who may consult with a multi-disciplinary team.

(10) "Health care service" means any service provided to a resident of an assisted living facility that is ordered by a practitioner and required to be provided or delegated by a licensed, registered, or certified health care professional. Any other service, whether or not ordered by a physician or practitioner, that is not required to be provided by a licensed, registered, or certified health care professional is not to be considered a health care service.

(11) "Involuntary transfer or discharge" means the involuntary discharge of a resident from the licensed facility or the involuntary transfer of a resident to a bed outside of the licensed facility. The term does not include the transfer of a resident from one bed to another within the same licensed facility, or the temporary transfer or relocation of the resident outside the licensed facility for medical treatment.

(12) "License" means the document issued by the department that authorizes a person or entity to provide personal care or assisted living services.

(13) "Licensed health care professional" means a licensed physician, physician assistant-certified, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the Department of Labor and Industry.

(14) "Mechanical assistance" means the use of any assistive device that aids in the mobility and transfer of the resident. Assistive devices include but are not limited to, braces, walkers, canes, crutches, wheelchairs, and similar devices.

(15) "Medication administration" means an act in which a prescribed drug or biological is given to a resident by an individual who is authorized in accordance with state laws and regulations governing such acts.

(16) "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3, MCA;

(c) a professional counselor licensed under Title 37, chapter 23, MCA;

- (d) a psychologist licensed under Title 37, chapter 17, MCA;
- (e) a social worker licensed under Title 37, chapter 22, MCA;
- (f) a marriage and family therapist under Title 37, chapter 37, MCA;
- (g) an advanced practice registered nurse, as provided for in 37-8-202, MCA, with a clinical specialty in psychiatric mental health nursing; or
- (h) a physician assistant licensed under Title 37, chapter 20, MCA, with a clinical specialty in psychiatric mental health.

~~(16)~~(17) "Nursing care" means the practice of nursing as governed by Title 37, chapter 8, 37-8-102(7), MCA and by administrative rules adopted by the Board of Nursing, found at ARM Title 8 24, chapter 32 159, ~~subchapters 1 through 17.~~

~~(17)~~(18) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(18)~~(19) "Practitioner" means an individual licensed by the Department of Labor and Industry who has assessment, admission, and prescription authority.

~~(19)~~(20) "PRN medication" means an administration scheme, in which a medication is not routine, is taken as needed, and requires the licensed health care professional or individual resident's own cognitive assessment and judgement for need and effectiveness.

~~(20)~~(21) "Resident" means anyone at least 18 years of age accepted for care in an assisted living facility.

~~(21)~~(22) "Resident agreement" means a signed, dated, written document that lists all charges, services, refunds, and move out criteria and complies with ARM 37.106.2823.

~~(22)~~(23) "Resident certification" means written certification by a licensed health care professional that the facility can adequately meet the particular needs of a resident. The licensed health care professional making the resident certification must have:

- (a) visited the resident on site; and
- (b) determined that the resident's health care status does not require services at another level of care.

~~(23)~~(24) "Resident's legal representative" or "resident's representative" means the resident's guardian, or if no guardian has been appointed, then the resident's family member or other appropriate person acting on the resident's behalf.

~~(24)~~(25) "Self-administration assistance" means providing necessary assistance to any resident in taking their medication, including:

- (a) removing medication containers from secured storage;
- (b) providing verbal suggestions, prompting, reminding, gesturing, or providing a written guide for self-administering medications;
- (c) handing a prefilled, labeled medication holder, labeled unit dose container, syringe or ~~original marked~~ other labeled container from the pharmacy or a medication organizer as described in ARM 37.106.2847 to the resident;
- (d) opening the lid of the above container for the resident;
- (e) guiding the hand of the resident to self-administer the medication;
- (f) holding and assisting the resident in drinking fluid to assist in the swallowing of oral medications; and
- (g) assisting with removal of a medication from a container for residents with a physical disability which prevents independence in the act.

~~(25)~~(26) "Service coordination" means that the facility either directly provides or assists the resident to procure services including, but not limited to:

- (a) beauty or barber shop;
- (b) financial assistance or management;
- (c) housekeeping;
- (d) laundry;
- (e) recreation activities;
- (f) shopping;
- (g) spiritual services; and
- (h) transportation.

~~(26)~~(27) "Service plan" means a written plan for services developed by the facility with the resident or resident's legal representative which reflects the resident's capabilities, choices and, if applicable, measurable goals and risk issues. The plan is developed on admission and is reviewed and updated annually and if there is a significant change in the resident's condition. The development of the service plan does not require a licensed health care professional.

~~(27)~~(28) "Severe cognitive impairment" means the loss of intellectual functions, such as thinking, remembering, and reasoning, of sufficient severity to interfere with a person's daily functioning. Such a person is incapable of recognizing danger, self-evacuating, summoning assistance, expressing need, and/or making basic care decisions.

~~(28)~~ "Significant event" means a change in health status that requires care from a licensed health care professional such as:

- ~~(a) a change in resident services;~~
- ~~(b) explained or unexplained injuries to the resident that require medical intervention or first aid; or~~
- ~~(c) resident on resident, resident on staff or staff on resident aggression.~~

(29) "Significant change" means a resident status or condition change that results in a change in service and care needs. This includes:

- (a) admission to, or discharge from hospice services;
- (b) a change in categorization; or
- (c) an accident or health event that changes the functional or cognitive abilities of the resident.

~~(29)~~(30) "Therapeutic diet" means a diet ordered by a physician or practitioner as part of treatment for a disease or clinical condition or to eliminate or decrease specific nutrients in the diet, (e.g., sodium) or to increase specific nutrients in the diet (e.g., potassium) or to provide food the resident is able to eat (e.g., mechanically altered diet).

~~(30)~~(31) "Third party services" means care and services provided to a resident by individuals or entities who have no fiduciary interest in the facility.

~~(31)~~(32) "Treatment" means a therapy, modality, product, device, or other intervention used to maintain well-being or to diagnose, assess, alleviate, or prevent a disability, injury, illness, disease, or other similar condition.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2809 LICENSE APPLICATION PROCESS (1) Application for a license accompanied by the required fee shall be made to the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953 upon forms provided by the department and shall include full and complete information as to the:

- (a) identity of each officer and director of the corporation, if organized as a corporation;
- (b) identity of each general partner if organized as a partnership or limited liability partnership;
- (c) name of the administrator and administrator's qualifications;
- (d) name, address, and phone number of the management company if applicable;
- (e) physical location address, mailing address, and phone number of the facility;
- (f) maximum number of A beds, B beds ~~and~~, C beds, and D beds in the facility;
- (g) policies and procedures as outlined in ARM 37.106.2815; and
- (h) resident agreement, as outlined in ARM ~~37.106.2831~~ 37.106.2823, intended to be used.

(2) Every facility shall have distinct identification or name and shall notify the department in writing within 30 days prior to changing such identification or name.

(3) Each assisted living facility shall promptly report to the department any plans to relocate the facility at least 30 days prior to effecting such a move.

(4) In the event of a facility change of ownership, the new owners shall provide the department the following:

- (a) a completed application with fee;
- (b) a copy of the fire inspection conducted within the past year;
- (c) policies and procedures as prescribed in ARM 37.106.2815; or
- (d) if applicable, a written statement indicating that the same policies and procedures will be used is as required;
- (e) a copy of the resident agreement as outlined in ARM 37.106.2823 to be used; and
- (f) documentation of compliance with ARM 37.106.2814.

(5) Under a change of ownership, the seller shall return to the department the assisted living license under which the facility had been previously operated. This information must be sent to the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2810 LICENSE RESTRICTIONS (1) A license is not subject to sale, assignment, or other transfer, voluntary or involuntary.

(2) A license is valid only for the premises for which the original license was issued.

(3) The license remains the property of the department and shall be returned to the department upon closing or transfer of ownership.

(a) The address for returning the license is Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2814 ADMINISTRATOR (1) Each assisted living facility shall employ an administrator. The administrator is responsible for operation of the assisted living facility at all times and shall ensure 24-hour supervision of the residents.

(2) The administrator must meet the following minimum requirements:

(a) be currently licensed as a nursing home administrator in Montana or another state; or

(b) has successfully completed all of the self study modules of "~~The Management Library for Administrators and Executive Directors~~", "A Management Reference for Executive Directors - Admin Level 1 Certificate Program," a component of the assisted living training system published by the ~~assisted living university (ALU)~~ Senior Living University (SLU) or an alternate, approved program; or

(c) be enrolled in and complete the self study course referenced in (2)(b), within six months from hire.

(3) The administrator must show evidence of at least 16 contact hours of annual continuing education relevant to the individual's duties and responsibilities as administrator of the assisted living facility.

(a) A nursing home administrator license or the ALU SLU certification may count as 16 hours of annual continuing education but only for the calendar year in which the license or certification was initially obtained.

(4) In the absence of the administrator, a staff member must be designated to oversee the operation of the facility ~~during the administrator's absence~~. The administrator or designee shall be in charge, on call, and physically available on a daily basis as needed, and shall ensure there are sufficient, qualified staff so that the care, well-being, health, and safety needs of the residents are met at all times.

(a) If the administrator will be absent from the facility for more than 30 continuous days, the department shall be given written notice of the individual who has been appointed the designee. The appointed designee must meet all the requirements of ~~ARM 37.106.2814~~ (1) and (2).

(5) The administrator or designee may not be a resident of the facility.

(a) A designee must:

(i) be age 18 or older; and

(ii) have demonstrated competencies required to assure protection of the safety and physical, mental, and emotional health of residents.

(6) The administrator or ~~their~~ designee shall:

(a) ensure that the current facility licenses or licenses are posted at a place in the facility that is accessible to the public at all times;

(b) oversee the day-to-day operation of the facility including ~~but not limited to:~~

- (i) all personal care services ~~to~~ for residents;
- (ii) the employment, training, and supervision of staff and volunteers;
- (iii) maintenance of buildings and grounds; and
- (iv) record keeping; and
- (c) protect the safety and physical, mental, and emotional health of residents.
- (7) The facility shall notify the department within five days of an administrator's departure or a new administrator's employment.
- (8) The administrator or designee shall initiate transfer of a resident through the resident and/or the resident's practitioner, appropriate agencies, or the resident's legal representative when the resident's condition is not within the scope of services of the assisted living facility.
- (9) The administrator or designee shall accept and retain only those residents whose needs can be met by the facility and who meet the acceptance criteria found in 50-5-226, MCA.
- (10) The administrator or designee must ensure that a resident who is ambulatory only with mechanical assistance is:
 - (a) able to safely self-evacuate the facility without the aid of an elevator or similar mechanical lift;
 - (b) have the ability to move past a building code approved occupancy barrier or smoke barrier into an adjacent wing or building section; or
 - (c) reach and enter an approved area of refuge.
- (11) The administrator or designee shall ensure and document that orientation is provided to all employees at a level appropriate to the employee's job responsibilities.
- (12) The administrator or designee shall review every accident or incident causing injury to a resident and document the appropriate corrective action taken to avoid a reoccurrence.
- (13) The owner of an assisted living facility may serve as administrator, or in any staff capacity, if the owner meets the qualifications specified in these rules.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2815 WRITTEN POLICIES AND PROCEDURES (1) A ~~policy~~ policies and procedures manual for the organization and operation of the assisted living facility shall be developed, implemented, kept current, reviewed every other year and as necessary to assure the continuity of care and day to day operations of the facility. Each review of the manual shall be documented, and the manual shall be available in the facility to staff, residents, residents' legal representatives, and representatives of the department at all times.

(2) The manual must include an organizational chart delineating the lines of authority, responsibility, and accountability for the administration and resident care services of the facility.

(3) New policies, as developed, must be submitted to the department for review.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2816 ASSISTED LIVING FACILITY STAFFING (1) The administrator shall develop minimum qualifications for the hiring of direct care staff and support staff.

(2) The administrator shall develop policies and procedures for ~~screening, conducting criminal background checks,~~ hiring, and assessing staff, which include practices that assist the employer in identifying employees ~~that who~~ may pose risk or threat to the health, safety, or welfare of any resident and provide written documentation of findings and the outcome in the employee's file.

(a) A name-based or FBI fingerprint background check shall be conducted on all employees who have accepted employment at an assisted living facility.

(i) If an applicant has lived outside the state within the past five years, the assisted living facility must complete background checks in every state in which the applicant has resided within the past five years or conduct an FBI fingerprint background check.

(b) The administrator may allow an employee to work provisionally pending the background check results so long as there are no indications the employee poses a risk or threat to the health, safety, or welfare of the residents in the facility.

(i) Indications that an employee may pose a risk or threat to the health, safety, and welfare of the residents of the facility include self-reported or otherwise known history of abuse, neglect, or exploitation, pending legal proceedings, currently on parole or probation, or any other indicator the facility determines reasonable.

(c) An assisted living facility may not employ any person who meets the criteria of 50-5-225(4), MCA.

(3) New employees shall receive orientation and training in areas relevant to the employee's duties and responsibilities, including:

(a) an overview of the facility's policies and procedures manual in areas relevant to the employee's job responsibilities;

(b) a review of the employee's job description;

(c) services provided by the facility;

(d) the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act found at 52-3-801 et seq., MCA; and

(e) the Montana Long-Term Care Resident Bill of Rights Act found at 50-5-1101 et seq., MCA;

(f) staff who are responsible for assisting with self-administration of medication will receive orientation and training on resident Medication Administration Records (MARs) and the five rights of medication administration; and

(g) all direct care staff will receive, at minimum, two hours of training in dementia care upon hire and annually thereafter.

(4) In addition to meeting the requirements of (3), direct care staff shall be trained to perform the services established in each resident service plan.

(a) Direct care staff will review each resident's current service plan or health care plan and document that they have reviewed the plan and can perform the services required.

(5) Direct care staff shall be trained in the use of the abdominal thrust maneuver and basic first aid. If the facility offers cardiopulmonary resuscitation (CPR), at least one person per shift shall hold a current CPR certificate.

(6) The following rules must be followed in staffing the assisted living facility:

(a) direct care staff shall have knowledge of the resident's needs and any events about which the employee should notify the administrator or the administrator's designated representative;

(b) the facility shall have a sufficient number of qualified staff on duty 24 hours a day to meet the scheduled and unscheduled needs of each resident, to respond in emergency situations, and all related services, including, ~~but not limited to:~~

(i) maintenance of order, safety, and cleanliness;

(ii) assistance with medication regimens;

(iii) preparation and service of meals;

(iv) housekeeping services and assistance with laundry; and

(v) assurance that each resident receives the supervision and care required by the service or health care plan to meet the resident's basic needs;

(c) an individual on each work shift shall have keys to all relevant resident care areas and access to all items needed to provide appropriate resident care;

(d) direct care staff may not perform any service for which they have not received appropriate documented training; and

(e) facility staff may not perform any health care service that has not been appropriately delegated under the Montana Nurse Practice Act or in the case of licensed health care professionals, that is beyond the scope of their license.

(7) Employees and volunteers may perform support services, such as cooking, housekeeping, laundering, general maintenance, and office work after receiving an orientation to the appropriate sections of the facility's policy and procedure manual. Any person providing direct care, however, is subject to the orientation and training requirements for direct care staff.

(8) Volunteers may be utilized in the facility, but may not be included in the facility's staffing plan in lieu of facility employees. In addition, the use of volunteers is subject to the following:

(a) volunteers must be supervised and be familiar with resident rights and the facility's ~~policy~~ policies and procedures which apply to their duties as a volunteer; and

(b) volunteers shall not assist with medication administration, delegated nursing tasks, bathing, toileting, or transferring.

(9) Residents may participate voluntarily in performing household duties and other tasks suited to the individual resident's needs and abilities, but residents may not be used as substitutes for required staff or be required to perform household duties or other facility tasks.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2817 EMPLOYEE FILES (1) The facility is responsible for maintaining a file on each employee and substitute personnel.

(2) The following documentation from employee files must be made available to the department at all reasonable times, but shall be made available to the department within 24 hours after the department requests to review the files:;

- (a) the employee's name;
- (b) a copy of current credentials, certifications, or professional licenses as required to perform the job description;
- (c) an initialed copy of the employee's job description; ~~and~~
- (d) initialed documentation of employee orientation and ongoing training including documentation of ~~Heimlich maneuver training~~ abdominal thrust maneuver training, basic first aid, and CPR; ~~and~~
- (e) the result of the employee's criminal background check.

(3) The facility shall keep an employee file that meets the requirements set forth in (2) for the administrator of the facility, even when the administrator is the owner.

(4) The employer must have evidence of contact to verify that each certified nursing assistant has no adverse findings entered on the nurse aid registry maintained by the department in the certification bureau.

(a) A facility may not employ or continue employment of any person who has adverse findings on the ~~department~~ nurse aide registry maintained by the department's certification bureau.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2821 RESIDENT APPLICATION AND NEEDS ASSESSMENT

PROCEDURE (1) All facilities must develop a written application procedure for admission to the facility which includes the prospective resident's name and address, sex, date of birth, marital status, and religious affiliation (if volunteered).

(2) The facility shall determine whether a potential resident meets the facility's admission requirements and that the resident is appropriate to the facility's license endorsement as either a category A, category B ~~or~~, category C, or category D facility, as specified in 50-5-226(2) ~~through (4)~~, MCA.

(3) Prior to admission, the facility shall conduct an initial resident needs assessment to determine the prospective resident's needs.

(4) The initial resident's needs assessment must include documentation of the following:

- (a) cognitive patterns to include short-term memory, long term memory, memory recall, decision making, and change in cognitive status/awareness, or thinking disorders;
- (b) sensory patterns to include hearing, ability to understand others, ability to make self understood, and ability to see in adequate light;
- (c) activities of daily living (ADL) functional performance to include ability to transfer, locomotion, mobility devices, dressing, eating, use of toilet, bladder continence, bowel continence, continence appliance/programs, grooming, and bathing;

(d) mood and behavior patterns, sadness or anxiety displayed by resident, wandering, verbally abusive, physically abusive, and socially inappropriate/disruptive behavior;

(e) health problems/accidents;

(f) weight/nutritional status to include current weight and nutritional complaints;

(g) skin problems;

(h) ~~medication use to include taking prescription and/or over the counter, recent changes, currently taking an antibiotic, antipsychotic use, antianxiety/hypnotic use and antidepressant use~~ current medication use including over-the-counter and/or prescription medications; and

(i) use of restraints, safety, or assistive devices.

(5) The department shall collect a fee of \$100 from a prospective resident, resident or facility appealing a rejection, or relocation decision made pursuant to ARM 37.106.2821, to cover the cost of the independent nurse resident needs assessment.

(6) The resident's needs assessment shall be reviewed and updated annually or at any time the resident's needs change significantly.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2822 RESIDENT SERVICE PLAN: CATEGORY A (1) Based on the initial resident's needs assessment, an initial service plan shall be developed for all category A residents within 24 hours of admission. The initial service plan shall be reviewed or modified within 60 days of admission to assure the service plan accurately reflects the resident's needs and preferences.

(2) The service plan shall include a written description of:

(a) what the service is;

(b) who will provide the service;

(c) when the service is performed;

(d) where and how often the service is provided;

(e) changes in service and the reasons for those changes;

(f) if applicable, the desired outcome;

(g) an emergency contact with phone number; and

(h) the prospective resident's practitioner's name, address, and telephone number and whether there are any health care decision making instruments in effect if applicable.

(3) ~~The resident's needs assessment and service plan shall be reviewed and updated annually, or at any time the resident's needs change significantly~~ has a significant change.

(4) A copy of the resident service plan shall be given to the resident or resident's legal representative and be made part of the resident file.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2823 RESIDENT AGREEMENT (1) An assisted living facility shall enter into a written resident agreement with each prospective resident prior to admission to the assisted living facility. The agreement shall be signed and dated by a facility representative and the prospective resident or the resident's legal representative. The facility shall provide the prospective resident or the resident's legal representative and the resident's practitioner, if applicable, a copy of the agreement and shall explain the agreement to them. The agreement shall include at least the following items:

(a) the criteria for requiring transfer or discharge of the resident to another facility providing a different level of care;

(b) a statement explaining the availability of skilled nursing or other professional services from a third party provider to a resident in the facility;

(c) the extent that specific assistance will be provided by the facility as specified in the resident service plan;

(d) a statement explaining the resident's responsibilities including ~~but not limited to~~ house rules, the facility grievance policy, facility smoking policy ~~and policies~~, facility policy regarding pets, and the facility policy on medical and recreational marijuana use. A facility policy on medical marijuana must follow 50-46-318 and 50-46-320, MCA;

(e) a listing of specific charges to be incurred for the resident's care, frequency of payment, facility rules relating to nonpayment of services, and security deposits, if any are required;

(f) a statement of all charges, fines, penalties, or late fees that shall be assessed against the resident;

(g) a statement that the agreed upon facility rate shall not be changed unless 30 days' advance written notice is given to the resident and/or the resident's legal representative; and

(h) an explanation of the assisted living facility's policy for refunding payment in the event of the resident's absence, discharge, or transfer from the facility and the facility's policy for refunding security deposits.

(2) When there are changes in services, financial arrangements, or in requirements governing the resident's conduct and care, a new resident/provider agreement must be executed or the original agreement must be updated by addendum and signed and dated by the resident or the resident's legal representative and by the facility representative.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2824 INVOLUNTARY DISCHARGE CRITERIA (1) Residents shall be given a written 30 day notice when they are requested to move out. The administrator or designee shall initiate transfer of a resident through the resident's physician or practitioner, appropriate agencies, ~~or~~ and the resident's ~~for resident's~~ legal representative, as applicable, when:

(a) the resident's needs exceed the level of ADL services the facility provides;

(b) the resident exhibits behavior or actions that repeatedly and substantially interfere with the rights, health, safety, or well-being of other residents and the facility has tried prudent and reasonable interventions;

(i) documentation of the interventions attempted by the facility shall become part of the resident's record;

(c) the resident, due to severe cognitive decline, is not able to respond to verbal instructions, recognize danger, make basic care decisions, express needs, or summon assistance, except as permitted by ARM 37.106.2891 through 37.106.2898;

(d) the resident has a medical condition that is complex, unstable, or unpredictable and treatment cannot be appropriately developed in the assisted living environment;

(e) the resident has had a significant change in condition that requires medical or psychiatric treatment outside the facility and at the time the resident is to be discharged from that setting to move back into the assisted living facility, appropriate facility staff have re-evaluated the resident's needs and have determined the resident's needs exceed the facility's level of service. Temporary absence for medical treatment is not considered a move out; or

(f) the resident has failed to pay charges after reasonable and appropriate notice; or

(g) the facility ceases to operate.

(2) The resident's 30 day written move out notice shall, at a minimum, include the following:

(a) the reason for transfer or discharge;

(b) the effective date of the transfer or discharge;

(c) ~~the location to which the resident is to be transferred or discharged~~
optional discharge locations;

(d) a statement that the resident has the right to appeal the action to the department; and

(e) the name, address, and telephone number of the state long term care ombudsman.

~~(3) A resident may be involuntarily discharged in less than 30 days written notice of discharge in less than 30 days may be issued for the following reasons:~~

(a) if a resident has a medical emergency;

(b) the resident exhibits behavior that poses an immediate danger to self or others; or

(c) if the resident has not resided in the facility for 30 days.

(4) A resident has a right to a fair hearing to contest an involuntary transfer or discharge.

(a) Involuntary transfer or discharge is defined in ARM 37.106.2805.

(b) A resident may exercise his or her right to appeal an involuntary transfer or discharge by submitting a written request for fair hearing to the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, Office of Fair Hearings, P.O. Box 202953, 2401 Colonial Drive, Helena, MT 59620-2953, within 30 days of notice of transfer or discharge.

(c) The parties to a hearing regarding a contested transfer or discharge are the facility and the resident contesting the transfer or discharge. The department is

not a party to such a proceeding, and relief may not be granted to either party against the department in a hearing regarding a contested transfer or discharge.

(d) Hearings regarding a contested transfer or discharge shall be conducted in accordance with ARM 37.5.304, 37.5.305, 37.5.307, 37.5.313, 37.5.322, 37.5.325, and 37.5.334, and a resident shall be considered a claimant for purposes of these rules.

(e) The request for appeal of a transfer or discharge does not automatically stay the decision of the facility to transfer or discharge the resident. The hearing officer may, for good cause shown, grant a resident's request to stay the facility's decision pending a hearing.

(f) The hearing officer's decision following a hearing shall be the final decision for the purposes of judicial review under ARM 37.5.334.

(5) The facility must assist with discharge to ensure safe and appropriate placement of the resident.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2829 RESIDENT FILE (1) At the time of admission, a separate file must be established for each category A, category B ~~or~~, category C, or category D resident. This file must be maintained on site in a safe and secure manner and must preserve the resident's confidentiality.

(2) The file shall include at least the following:

~~(a) the resident application form;~~

~~(b)~~(a) a completed resident agreement, in accordance with ARM 37.106.2823;

~~(c)~~(b) updates of resident/provider agreements, if any;

~~(d)~~(c) the service plan for all category A residents;

~~(e)~~(d) resident's weight on admission and at least annually thereafter for category A residents or more often as the resident, or the resident's licensed health care professional, determine a weight check is necessary;

~~(f)~~(e) reports of significant events including:

~~(i) the provider's response to the event~~ documentation of the notice to the resident's practitioner;

(ii) steps taken to safeguard the resident; and

(iii) facility contacts with family members or another responsible party;

~~(g)~~(f) a record of communication between the facility and the resident or their representative if there has been a change in the resident's status or a need to discharge; and

~~(h)~~(g) the date and circumstances of the resident's final transfer, discharge, or death, including notice to responsible parties and disposition of personal possessions.

(3) The resident file must be kept current. The file must be retained for a minimum of three years following the resident's discharge, transfer, or death.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2835 RESIDENT UNITS (1) A resident of an assisted living facility who uses a wheelchair or walker for mobility, or who is a category B ~~or~~ category C, or category D resident, must not be required to use a bedroom on a floor other than the first floor of the facility that is entirely above the level of the ground, unless the facility is designed and equipped in such a manner that the resident can move between floors or to an adjacent international conference of building code officials approved occupancy/fire barrier without assistance and the below grade resident occupancy is or has been approved by the local fire marshal.

(2) Each resident bedroom must satisfy the following requirements:

(a) in a previously licensed facility, no more than four residents may reside in a single bedroom;

(b) in new construction and facilities serving residents with severe cognitive impairment, occupancy must be limited to no more than two residents per room;

(c) exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, each single bedroom must contain at least 100 square feet, and each multi-bedroom must contain at least 80 square feet per resident;

(d) each resident must have a wardrobe, locker, or closet with minimum clear dimensions of ~~one~~ one 1 foot 10 inches in depth by ~~one~~ one 1 foot ~~eight~~ eight 8 inches in width, with a clothes rod and shelf placed to permit a vertically clear hanging space of ~~five~~ five 5 feet for full length garments;

(e) a sufficient number of electrical outlets must be provided in each resident bedroom and bathroom to meet staff and resident needs without the use of extension cords;

(f) each resident bedroom must have operable exterior windows which meet the approval of the local fire or building code authority having jurisdiction;

(g) the resident's bedroom door may be fitted with a lock if approved in the resident service plan, as long as facility staff have access to a key at all times in case of an emergency. Deadbolt locks are prohibited on all resident bedrooms. Resident bedroom door locks must be operable, on the resident side of the door, with a single motion and may not require special knowledge for the resident to open;

(h) kitchens or kitchenettes in resident bedrooms are permitted if the resident's service plan permits unrestricted use and the cooking appliance can be removed or disconnected if the service plan indicates the resident is not capable of unrestricted use.

(3) A hallway, stairway, unfinished attic, garage, storage area or shed, or other similar area of an assisted living facility must not be used as a resident bedroom. Any other room must not be used as a resident bedroom if it:

(a) can only be reached by passing through a bedroom occupied by another resident;

(b) does not have an operable window to the outside; or

(c) is used for any other purpose.

(4) Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to the adoption of this rule or construction factors would make compliance extremely difficult or impossible and if the department determines that the level of safety to residents and staff is not diminished.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2836 FURNISHINGS (1) Each resident in an assisted living facility must be provided the following at a minimum by the facility:

- (a) an individual towel rack;
- (b) a handicap accessible mirror mounted or secured to allow for convenient use by both wheelchair bound residents and ambulatory persons;
- (c) clean, flame-resistant, or non-combustible window treatments or equivalent, for every bedroom window. In a category D facility or unit, the use of blinds or curtains is not permissible. A flame-resistant or non-combustible window valance, not exceeding 14 inches in length, may be used;
- (d) an electric call system comprised of a fixed manual, pendant cordless or two way interactive, UL or FM listed system which must connect resident rooms to the care staff center or staff pagers. A resident room that is designated as double occupancy must be equipped with a call system for both occupants. In category D facilities or units, resident bedroom call cords or strings in excess of 6 inches shall not be permitted; and
- (e) for each multiple-bed room, either flame-resistant privacy curtains for each bed or movable flame-resistant screens to provide privacy upon the request of a resident.

(2) Following the discharge of a resident, all of the equipment and bedding used by that resident and owned by the facility must be cleaned and sanitized.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2838 RESIDENT TOILETS AND BATHING (1) The facility shall provide:

- (a) at least one toilet for every four residents;
 - (b) one bathing facility for every 12 residents; and
 - (c) a toilet and sink in each toilet room.
- (2) All resident rooms with toilets or shower/bathing facilities must have an operable window to the outside or must be exhausted to the outside by a mechanical ventilation system.
- (3) Each resident room bathroom shall:
- (a) be in a separate room with a toilet. A sink need not be in the bathroom but shall be in close proximity to the toilet. A shower or tub is not required if the facility utilizes a central bathing unit or units; and
 - (b) have at least one towel bar per resident, one toilet paper holder, one accessible mirror and storage for toiletry items.
- (4) All doors to resident bathrooms shall open outward or slide into the wall and shall be unlockable from the outside.
- (a) Dutch doors, bi-folding doors, sliding pocket doors and other bi-swing doors may be used if they do not impede the bathroom access width and are

approved by the department. A shared bathroom with two means of access is also acceptable.

(b) Resident bathroom door locks must be operable, on the resident side of the door, with a single motion and may not require special knowledge for the resident to open.

(5) In rooms used by category C or other special needs residents, the bathroom does not have to be in a separate room and does not require a door.

(6) Each resident must have access to a toilet room without entering another resident's room or the kitchen, dining, or living areas.

(7) Each resident bathroom or bathing room shall have ~~an~~ a fixed emergency call system ~~reporting accessible to an individual collapsed on the floor that reports to the staff location with an audible signal. The device must be silenced at the that location only and shall be accessible to an individual collapsed on the floor.~~ Vibrating systems are acceptable.

(8) In category D facilities or units, bathroom call cords or strings in excess of 6 inches shall not be permitted.

~~(8)~~ (9) Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to December 27, 2002, or construction factors would make compliance extremely difficult or impossible and if the department determines that the level of safety to residents and staff is not diminished.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2847 MEDICATIONS: PRACTITIONER ORDERS (1) Medication and treatment orders shall be carried out as prescribed. The resident has the right to consent to or refuse medications and treatments. The practitioner shall be notified if a resident refuses consent to an order. Subsequent refusals to consent to an order shall be reported as required by the practitioner.

(2) A prescription medication for which the dose or schedule has been changed by the practitioner must be noted in the resident's medication administration record ~~and the resident's service or health care plan by an appropriate licensed health care professional.~~

(3) Current practitioners' orders shall be documented and kept in all resident files.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2849 MEDICATIONS: RECORDS AND DOCUMENTATION (1) An accurate medication record for each resident shall be kept of all medications, including over-the-counter medications, for those residents whose self-administration of medication requires monitoring and/or assistance by the facility staff.

(2) The record shall include:

- (a) name of medication, reason for use, dosage, route, and date and time given;
 - (b) name of the prescribing practitioner and their telephone number;
 - (c) any adverse reaction, unexpected effects of medication, or medication error, which must also be reported to the resident's practitioner;
 - (d) allergies and sensitivities, if any;
 - (e) resident specific parameters and instructions for PRN medications;
 - (i) documentation of when and why a PRN was administered or self-administered and follow up documentation as to the effectiveness of the PRN;
 - (f) documentation of treatments with resident specific parameters;
 - (g) documentation of doses missed or refused by resident and why;
 - (h) initials of the person monitoring and/or assisting with self-administration of medication; and
 - (i) review date and name of reviewer.
- (3) ~~The~~ When using paper Medication Administration Records (MARs), the facility shall maintain legible signatures of staff who monitor and/or assist with the self-administration of medication, either on the medication administration record or on a separate signature page. Electronic MARs must include the names associated with the initials of those staff documenting administration of medications.
- (4) A medication record need not be kept for those residents for whom written authorization has been given by their practitioner to keep their medication in their rooms and to be fully responsible for taking the medication in the correct dosage and at the proper time. The authorization must be renewed on an annual basis.
- (5) The facility shall maintain a record of all destroyed or returned medications in the resident's record or closed resident file in the case of resident transfer or discharge.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2854 USE OF RESTRAINTS, SAFETY DEVICES, ASSISTIVE DEVICES, AND POSTURAL SUPPORTS, AND SECLUSION ROOMS (1) The facility shall comply with the rules governing the use, in long term care facilities, of restraints, safety devices, assistive devices ~~and~~, postural supports, and seclusion rooms in long term care facilities. The provisions of ARM 37.106.2901, 37.106.2902, 37.106.2904, 37.106.2905, and 37.106.2908 shall apply.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2855 INFECTION CONTROL (1) The assisted living facility must establish and maintain infection control policies and procedures sufficient to provide a safe, sanitary, and comfortable environment ~~and to prevent the transmission of disease to help prevent the development and transmission of communicable diseases and infections~~. Such policies and procedures must include, at a minimum, the following requirements:

~~(a) any employee contracting a communicable disease that is transmissible to residents through food handling or direct care must not appear at work until the infectious diseases can no longer be transmitted. The decision to return to work must be made by the administrator or designee, in accordance with the policies and procedures instituted by the facility~~ a system for preventing, identifying, investigating, and controlling infections and communicable diseases for all residents, staff, volunteers, and visitors;

(b) standard and transmission-based precautions to be followed to prevent spread of infections;

(c) when and how isolation should be used for a resident, including:

(i) the type and duration of the isolation, depending upon the infectious agent or organism involved; and

(ii) a requirement that the isolation should be the least restrictive possible for the resident under the circumstances;

(d) the circumstances under which the facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit disease;

~~(b)(e)~~ (f) if, after admission to the facility, a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents, the administrator or designee, must contact the resident's practitioner and assure that appropriate safety measures are taken on behalf of that resident and the other residents; and

~~(e)~~ (f) all staff shall use proper hand washing technique after providing direct care to a resident.

(2) The facility, where applicable, shall comply with applicable statutes and rules regarding the handling and disposal of hazardous waste.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2860 FOOD SERVICE (1) The facility must establish and maintain standards relative to food sources, refrigeration, refuse handling, pest control, storage, preparation, procuring, serving and handling food, and dish washing procedures that are sufficient to prevent food spoilage and the transmission of infectious disease. These standards must include the following:

(a) food must be obtained from sources that comply with all laws relating to food and food labeling;

(b) the use of home-canned foods is prohibited;

(c) food subject to spoilage removed from its original container, must be kept sealed, labeled, and dated.

(2) Foods must be served in amounts and a variety sufficient to meet the nutritional needs of each resident. The facility must provide therapeutic diets when prescribed by the resident's practitioner. At least three meals must be offered daily and at regular times, with not more than a 14-hour span between an evening meal and breakfast unless a nutritious snack is available in the evening, then up to 16 hours may elapse between a substantial evening meal and breakfast.

(3) Records of menus as served must be filed on the premises for three months after the date of service for review by the department.

(4) The facility shall take into consideration the preferences of the residents and the need for variety when planning the menu. Either the current day or the current week's menu shall be posted for resident viewing.

(5) The facility shall employ food service personnel suitable to meet the needs of the residents.

(a) Foods must be cut, chopped, and ground to meet individual needs or as ordered by the resident's physician or practitioner;

(b) If the cook or other kitchen staff must assist a resident with direct care outside the food service area, they must properly wash their hands before returning to food service; and

(c) ~~food service shall comply with the Montana administrative rule requirements for compliance with ARM Title 37, chapter 110, subchapter 2, food service establishments administered by the food and consumer safety section of the department of public health and human services.~~ All food and drink are to be stored at a minimum of 4 inches off the floor.

(d) A facility, whose kitchen and dining services are inspected by the local county health department, must provide the department a copy of their most recent inspection at the time of survey.

(6) If the facility admits residents requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing a meal. Dietitian consultation shall be provided as necessary and documented for residents requiring therapeutic diets.

(7) A minimum of a one-week supply of non-perishable foods and a two-day supply of perishable foods must be available on the premises.

(8) Potentially hazardous food, such as meat and milk products, must be stored at 41°F or below. Hot food must be kept at 140°F or above during preparation and serving.

(9) Freezers must be kept at a temperature of 0°F or below and refrigerators must be kept at a temperature of 41°F or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature. Temperatures shall be monitored and recorded at least once a month in a log maintained at the facility for one year.

(10) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practice during all working periods in food service.

(11) A food service employee, while infected with a disease in a communicable form that can be transmitted by foods may not work in the food service area.

(12) Tobacco products may not be used in the food preparation and kitchen areas.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2866 CONSTRUCTION, BUILDING AND FIRE CODES (1) Any construction of or alteration, addition, modification, or renovation to an assisted living

facility must meet the requirements of the building code and fire marshal agencies having jurisdiction and be approved by the officer having jurisdiction to determine if the building and fire codes are met by the facility.

(2) When a change in use ~~and, ownership, or~~ building code occupancy classification occurs, licensure approval shall be contingent on meeting the building code and fire marshal agencies' standards in effect at the time of such a change. Changes in use include adding a category B ~~or~~ C, or D license endorsement to a previously licensed category A facility.

(3) Changes in the facility location, use or number of facility beds cannot be made without written notice to, and written approval received from, the department.

(4) Exit doors ~~shall not include locks which prevent evacuation must be~~ operable on the resident side of the door with a single motion and may ~~not require special knowledge for the resident to open~~, except as approved by the fire marshal and building codes agencies having jurisdiction or in a secured unit or building that services category C or category D residents.

(5) Stairways, halls, doorways, passageways, and exits from rooms and from the building, shall be kept unobstructed at all times.

(6) All operable windows and outer doors that may be left open shall be fitted with insect screens.

(7) An assisted living care facility must have an annual fire inspection conducted by the appropriate local fire authority or the state fire marshal's office and maintain a record of such inspection for at least three years following the date of the inspection.

(8) An employee and resident fire drill ~~is~~ must be conducted at least two times annually, no closer than four months apart, and includes residents, employees and support staff on duty and other individuals in the facility. A resident fire drill includes making a general announcement throughout the facility that a resident fire drill is being conducted or sounding a fire alarm.

(9) Records of employee and resident fire drills ~~are~~ must be maintained on the premises for 24 months from the date of the drill and include the date and time of the drill, names of the employees participating in the drill, and identification of residents needing assistance for evacuation.

(10) A 2A10BC portable fire extinguisher shall be available on each floor of a ~~greater than facility licensed for 20 or more residents.~~ Facilities licensed for less than 20 residents shall comply with the requirements of the fire authority having jurisdiction with respect to the number and location of portable fire extinguishers. ~~facility and shall be as required by the fire authority having jurisdiction for facilities of less than 20 residents.~~

(11) Portable fire extinguishers must be inspected, recharged, and tagged at least once a year by a person certified by the state to perform such services.

(12) Smoke detectors installed and maintained ~~per~~ pursuant to the manufacturer's directions shall be installed in all resident rooms, bedroom hallways, living room, dining room, and other open common spaces or as required by the fire authority having jurisdiction. An annual maintenance log of battery changes and other maintenance services performed shall be kept in the facility and made available to the department upon request.

(13) If there is an inside designated smoking area, it shall be separate from other common areas, and provided with adequate mechanical exhaust vented to the outside.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2875 RESIDENT HEALTH CARE PLAN: CATEGORY B (1) Within 21 days of admission to a category B status, the administrator or designee shall assure that a written resident health care assessment and resident certification is performed on each category B resident.

(2) Each initial health care assessment by the licensed health care professional shall include, at a minimum, evaluation of the following:

- (a) cognitive status;
- (b) communication/hearing patterns;
- (c) vision patterns;
- (d) physical functioning and structural problems;
- (e) continence;
- (f) psychosocial well-being;
- (g) mood and behavior patterns;
- (h) activity pursuit patterns;
- (i) disease diagnosis;
- (j) health conditions;
- (k) oral nutritional status;
- (l) oral dental status;
- (m) skin condition;
- (n) medication use; and
- (o) special treatment and procedures.

(3) A written resident health care plan shall be developed. The resident health care plan shall include, but not be limited to the following:

- (a) a statement which informs the resident and the resident's practitioner, if applicable, of the requirements of 50-5-226(3) and (4), MCA;
- (b) orders for treatment or services, medications, and diet, if needed;
- (c) the resident's needs and preferences for themselves;
- (d) the specific goals of treatment or services, if appropriate;
- (e) the time intervals at which the resident's response to treatment will be reviewed; and
- (f) the measures to be used to assess the effects of treatment;
- (g) if the resident requires care or supervision by a licensed health care professional, the health care plan shall include the tasks for which the professional is responsible.

(4) The category B resident's health care plan shall be reviewed quarterly, and if necessary revised upon change of condition.

(5) The health care plan shall be readily available to and followed by those staff and licensed health care professionals providing the services and health care.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2885 ADMINISTRATION OF MEDICATIONS: CATEGORY B

(1) Written, signed practitioner orders shall be documented in all category B resident facility records by a legally authorized person for all medications and treatments which the facility is responsible to administer. Medication or treatment changes shall not be made without a practitioner's order. Order changes obtained by phone must be confirmed by written, signed orders within 21 days.

(2) All medications administered to a category B resident shall be administered by a licensed health care professional or by an individual delegated the task under the Nurse Practice Act and ARM Title 8 24, chapter 32 159, ~~subchapter 47~~. Those category B residents, ~~that~~ who are capable of medication self-administration shall be given the opportunity and encouraged to do so.

(3) Residents with a standing PRN medication order, ~~that~~ who cannot determine their own need for the medication by making a request to self-administer the medication or in the case of the cognitively impaired cannot respond to caretaker's suggestions for over-the-counter PRN pain medications shall:

(a) have the medication administered by a licensed health care professional after an assessment and the determination of need has been made; and

(b) be classified as a category B resident because a nursing decision to determine the resident's need for the medication was required.

(4) Medication and treatment orders shall be carried out as prescribed. The resident or the person legally authorized to make health care decisions for the resident has the right to consent to, or refuse medications and treatments. The practitioner shall be notified if a resident refuses consent to an order. Subsequent refusals to consent to an order shall be reported as required by the practitioner.

(5) Only the following individuals may administer medications to residents:

(a) a licensed physician, physician's assistant, certified nurse practitioner, advanced practice registered nurse, or a registered nurse;

(b) licensed practical nurse working under supervision;

(c) an unlicensed individual who is either employed by the facility or is working under third party contract with a resident or resident's legal representative and has been delegated the task under ARM Title 8 24, chapter 32 159, ~~subchapter 47~~; and

(d) a person related to the resident by blood or marriage or who has full guardianship.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2896 DISCLOSURES TO RESIDENTS: CATEGORY C (1) Each assisted living category C facility or unit must, prior to admission, inform the resident's legal representative in writing of the following:

(a) the overall philosophy and mission of the facility regarding meeting the needs of residents afflicted with severe cognitive impairment and the form of care or treatment offered;

(b) the process and criteria for move-in, transfer, and discharge;

- (c) the process used for resident assessment;
 - (d) the process used to establish and implement a health care plan, including how the health care plan will be updated in response to changes in the resident's condition;
 - (e) staff training and continuing education practices;
 - (f) the physical environment and design features appropriate to support the functioning of cognitively impaired residents;
 - (g) the frequency and type of resident activities;
 - (h) the level of involvement expected of families and the availability of support programs; and
 - (i) any additional costs of care or fees.
- (2) The facility must ~~obtain from the resident's legal representative a written acknowledgment that the information specified in (1) was provided. A copy of this written acknowledgment must be kept as part of the permanent resident file~~ provide a resident or a resident's legal representative with written documentation of the information specified in (1). A copy of this exchange must be kept as part of the resident file.

AUTH: 50-5-103, 50-5-223, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, 50-5-228, MCA

37.106.2904 USE OF RESTRAINTS, SAFETY DEVICES, ASSISTIVE DEVICES, AND POSTURAL SUPPORTS (1) The application or use of a restraint, safety device, or postural support is prohibited except to treat a resident's medical symptoms and may not be imposed for purposes of coercion, retaliation, discipline, or staff convenience.

(2) A restraint may be a safety device when requested by the resident or the resident's authorized representative or physician to reduce the risk of falls and injuries associated with a resident's medical symptoms and used in accordance with 50-5-1201, MCA.

(3) To the extent that a resident needs emergency care, restraints may be used for brief periods:

(a) to permit medical treatment to proceed unless the health care facility has been notified that the resident has previously made a valid refusal of the treatment in question; or

(b) if a resident's unanticipated violent or aggressive behavior places the resident or others in imminent danger, in which case the resident does not have the right to refuse the use of restraints. In this situation:

(i) the use of restraints is a measure of last resort to protect the safety of the resident or others and may be used only if the facility determines and documents that less restrictive means have failed;

(ii) the size, gender, physical, medical, and psychological condition of the resident must be considered prior to the use of a restraint;

(iii) a licensed nurse shall contact a resident's physician for restraint orders within one hour of application of a restraint;

(iv) the licensed nurse shall document in the resident's clinical record ~~file~~ the circumstances requiring the restraints and the duration; ~~and~~

(v) a restrained resident must be monitored as their condition warrants, and restraints must be removed as soon as the need for emergency care has ceased, and the resident's safety and the safety of others can be assured; and

(vi) a licensed nurse must provide one on one supervision to a resident who has a restraint applied for the reasons listed in (3).

(4) In accordance with the Montana Long-Term Care Residents' Bill of Rights, the resident or authorized representative is allowed to exercise decision-making rights in all aspects of the resident's health care or other medical regimens, with the exception of the circumstances described in (3)(b).

(5) Single or two quarter bed rails that extend the entire length of the bed are prohibited from use as a safety or assistive device; however, a bed rail that extends from the head to half the length of the bed and used primarily as a safety or assistive device is allowed.

(6) Physician-prescribed orthopedic devices used as postural supports are not considered safety devices or restraints and are not subject to the requirements for safety devices and restraints contained in these rules.

(7) Whenever a restraint, safety device, or postural support is used that restricts or prevents a resident from independent and purposeful functioning, the resident must be provided the opportunity for exercise and elimination needs at least every two hours, or more often as needed, except when a resident is sleeping.

(8) All methods of restraint, safety devices, assistive devices, and postural supports must be properly fastened or applied in accordance with manufacturer's instructions and in a manner that permits rapid removal by the staff in the event of fire or other emergency.

AUTH: 50-5-103, 50-5-226, 50-5-227, 50-5-1205, MCA

IMP: 50-5-103, 50-5-226, 50-5-227, 50-5-1201, 50-5-1202, 50-5-1204, MCA

5. The department proposes to repeal the following rule:

37.106.2886 MEDICATIONS: RECORDS AND DOCUMENTATION:
CATEGORY B

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

6. STATEMENT OF REASONABLE NECESSITY

The 2017 legislature enacted Senate Bill 272, an act creating a new license for assisted living facilities for those with dementia or other mental disorders who might be a harm to themselves or others; providing an involuntary commitment diversion option; amending laws related to involuntary commitment to address the added diversion alternative; and amending 50-5-224, 50-5-226, 50-5-227, 53-21-122, 53-21-123, 53-21-127, 53-21-181, and 53-21-198, MCA. The bill was signed by the Governor on May 17, 2017, and became effective on October 1, 2017.

The Department of Public Health and Human Services (department) proposes to adopt NEW RULES I through IX establishing new minimum standards for category D assisted living facilities. The proposed new rules are necessary to establish licensing and regulation to ensure the health and safety of individuals residing in a category D assisted living facility or unit in accordance with Senate Bill 272.

The 2019 legislature enacted House Bill 566, an act requiring background checks for all assisted living facility employees and amending 50-5-225 and 50-5-227, MCA. The bill was signed by the Governor on May 7, 2019. The department proposes to amend its administrative rules to reflect the requirement to conduct criminal background checks, what forms of background checks to be conducted, the ability of an employee to work provisionally pending the background check results, and the need for the records of the results of such background checks to be kept in the employee files. The proposed new rules are necessary to establish licensing and regulation regarding background checks for assisted living facility employees in accordance with Senate Bill 566.

The department proposes to update the language used in this subchapter to reflect current practices and to be consistent with the terminology of other agencies involved with the assisted living facilities.

NEW RULE I

The department proposes to adopt this new rule to inform assisted living providers of the construction requirements of a category D facility or unit.

NEW RULE II

The department proposes to adopt this new rule to establish minimum requirements for administrators of category D assisted living facilities.

NEW RULE III

The department proposes to adopt this new rule to specify that category D assisted living facilities or units must inform a category D resident, or their representative, of the facility's overall philosophy and mission, criteria for move-in and discharge, process for resident assessment, process for developing and implementing a health care plan, the requirements of staff training, the facility's physical environment and design features, the frequency and type of resident activities the facility offers, any additional costs of care or fees, and documentation on how the facility can keep all the residents safe. The category D facility or unit must provide some way of indicating that this information has been provided to the resident or the resident's legal representative.

NEW RULE IV

The department proposes to adopt this new rule to establish minimum requirements for the type, qualifications, and training of direct care staff in a category D assisted living facility.

NEW RULE V

The department proposes to adopt this new rule to specify the time frame, frequency, and retention of resident assessments for category D residents in category D assisted living facilities.

NEW RULE VI

The department proposes to adopt this new rule to specify what information is required on a health care plan for a category D resident in an assisted living facility.

NEW RULE VII

The department proposes to adopt this new rule to specify medication administration guidelines for category D residents in category D assisted living facilities, and to specify when a category D resident's doctor and practitioner need to be notified of refused medication.

NEW RULE VIII

The department proposes to adopt this new rule to specify discharge planning and documentation of discharges.

NEW RULE IX

The department proposes to adopt this new rule to specify the construction requirements of a seclusion room within a category D facility, and to specify the supervision requirements of a resident in a seclusion room.

ARM 37.106.2802

The department proposes a change to this rule to include facilities with a category D endorsement in the coverage of this rule.

ARM 37.106.2803

The department proposes a change to this rule to apply this rule to facilities with a category D endorsement.

ARM 37.106.2804

The department proposes a change to this rule to update current information for the subchapter identified.

ARM 37.106.2805

The department proposes a change to this rule to include the definition of a "mental health professional," "significant change," and to update the current title, chapter, and subchapter information for the Board of Nursing.

ARM 37.106.2809

The department proposes a change to this rule to remove Quality Assurance Division and update it to Office of Inspector General, and to include the requirement for addressing the number of category D beds in an assisted living facility.

ARM 37.106.2810

The department proposes a change to this rule to remove Quality Assurance Division and update it to Office of Inspector General.

ARM 37.106.2814

The department proposes a change to this rule to update the educational requirements for assisted living facility administrators.

ARM 37.106.2815

The department proposes a change to this rule to include a required timeframe for reviewing policies, and to require facilities to submit new policies to the department for review.

ARM 37.106.2816

The department proposes a change to this rule to include the requirement for the facility administrator to have a policy on conducting criminal background checks, the types of background checks that a facility can conduct, the ability of an employee to work provisionally pending the results of a background check, and identification of the criteria that would make someone ineligible to work in assisted living facilities. The department also proposes a change to this rule to include the requirement for staff who assist with self-administration of medication to receive additional training, and that all direct care staff review, and document their review of, resident service plans.

ARM 37.106.2817

The department proposes a change to this rule to include that the results of a criminal background check must be kept in the employee's file.

ARM 37.106.2821

The department proposes a change to this rule to include the requirement for addressing whether a category D resident is appropriate for admission to the facility using a resident needs assessment. The department proposes a change to this rule to also update the requirement to adhere to the additional portion of 50-5-226, MCA. The department proposes a change to this rule to include the annual review of residents' needs assessment under this rule.

ARM 37.106.2822

The department proposes a change to this rule to provide a specific timeframe in which a resident service plan must be developed, and to remove the portion of rule addressing annual review of a resident needs assessment from this rule.

ARM 37.106.2823

The department proposes a change to this rule to include the requirement for an assisted living facility to develop a policy on medical and recreational use of marijuana and to provide guidelines on what the policy must include pursuant to 50-46-318 and 50-46-320, MCA.

ARM 37.106.2824

The department proposes a change to this rule to provide assisted living facilities more flexibility in determining a discharge location when issuing a 30-day written discharge notice. Additionally, the department proposes a change to this rule to add a reason to issue a 30-day written discharge notice. The department proposes to further change this rule to include a requirement for a written notice for a discharge on less than 30-days' notice.

ARM 37.106.2829

The department proposes a change to this rule to include the requirement for a separate resident file to be kept for each category D resident. The department proposes to remove the requirement for a resident application and require documented practitioner notification for all resident significant events.

ARM 37.106.2835

The department proposes a change to this rule to include the requirement for a category D resident to not be required to use a bedroom on a floor other than the first floor of the facility that is entirely above the level of the ground, unless the facility is designed and equipped in such a manner that the resident can move between floors or to an adjacent international conference of building code officials approved occupancy/fire barrier without assistance and any below grade resident occupancy is or has been approved by the local fire marshal.

ARM 37.106.2836

The department proposes a change to this rule to provide category D assisted living facilities with the requirements for window furnishings. The department proposes a change to this rule to specify that a double-occupancy room must be equipped with a call system for both occupants in the room.

ARM 37.106.2838

The department proposes a change to this rule to provide category D assisted living facilities with the requirements for call system cords or strings. The department proposes further changes to this rule to align the regulations on the doorknobs that are used for resident bathrooms and the requirement of a fixed call system in the bathroom with the current National Fire Protection Association (NFPA) 101 and American Institute for Architects (AIA) guidelines.

ARM 37.106.2847

The department proposes to change this rule to remove the requirement that medication changes be noted in the service plan or health care plan by a licensed health care professional. The department proposes to further change this rule to require that current practitioners' orders be kept in all category A resident files.

ARM 37.106.2849

The department proposes to change this rule to require specific documentation on the Medication Administration Record of PRN medication administration.

ARM 37.106.2854

The department proposes a change to this rule to include the need for adhering to seclusion room requirements.

ARM 37.106.2855

The department proposes a change to this rule to require assisted living facilities to have detailed policies on preventing and mitigating communicable disease and infections.

ARM 37.106.2860

The department proposes a change to this rule to remove the reference to ARM Title 37, chapter 110, subchapter 2, which has been repealed, to provide a requirement of keeping food stored off the floor, and to require facilities whose kitchen is inspected by the county health department to maintain and provide records of the inspections to the department at the time of survey.

ARM 37.106.2866

The department proposes a change to this rule to include the requirement of licensure approval of changes in a category D assisted living facility. The department proposes to further change this rule to include a change of ownership as a condition that would trigger a requirement for licensure to be based on meeting then current building code and fire marshal agencies' standards for licensure, and to specify that exit doors must be single motion.

ARM 37.106.2875

The department proposes a change to this rule to update the requirement to adhere to the additional portion of 50-5-226, MCA. The department proposes to further change this rule to reflect the requirement of certification of a resident health care plan by a licensed healthcare professional for category B residents, and a quarterly review of the health care plan.

ARM 37.106.2885

The department proposes to change this rule to update the title, chapter, and subchapter information that addresses the Board of Nursing regulations.

ARM 37.106.2886

The department proposes to repeal this rule as it is repetitive of ARM 37.106.2879.

ARM 37.106.2896

The department proposes to amend this rule to modify the requirements of the facility for disclosing to the resident/resident's legal representative information regarding the category C facility's processes.

ARM 37.106.2904

The department proposes a change to this rule to include the need for a licensed nurse to provide one on one supervision to a resident any time a restraint is applied.

Fiscal Impact

The department does not expect there to be any fiscal impact related to the adoption, amendment, and repeal of these rules except as follows: category D is an optional endorsement; unless a facility elects to provide category D services, there is no fiscal impact on a facility. Regarding background checks, some facilities were previously conducting background checks while others were using alternative means to screen employees as was required in the previous rule. There may be a fiscal impact for those facilities who were not previously utilizing the services of a criminal background check contractor. There is an anticipated fiscal impact for the proposed two hours of dementia-related training upon hire and annually for direct-care staff.

These rules are intended to be effective upon the day after the date of publication.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 24, 2022.

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

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were notified by e-mail on August 3, 2021.

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

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State May 17, 2022.

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 37.36.604 pertaining to financial) PROPOSED AMENDMENT
eligibility criteria)

TO: All Concerned Persons

1. On June 16, 2022, 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 rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/87388422208?pwd=WnlyS0gxdUJWM21RZXhQY08rZU9oZz09>, meeting ID: 873 8842 2208, password 683340; or

(b) Dial by telephone +1 646 558 8656, meeting ID: 873 8842 2208. Find your local number: <https://mt-gov.zoom.us/j/87388422208>.

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 June 2, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.36.604 FINANCIAL ELIGIBILITY CRITERIA (1) Individuals whose annual family income during the 12 months immediately preceding the month of application is less than 250% of the ~~2024~~ 2022 poverty guidelines published by the U.S. Department of Health and Human Services (HHS) are eligible for a loan of specialized telecommunications equipment based on income. 250% of the HHS ~~2024~~ 2022 annual poverty guidelines for families of various sizes is specified on the Montana Telecommunications Access Program website, effective on January 13 ~~2024~~ 2022, which rate is adopted and incorporated here by reference. A copy is available at <https://dphhs.mt.gov/detd/mtap/nocostassistiveequipment>, or may be obtained from the Department of Public Health and Human Services, Montana Telecommunications Access Program (MTAP), P.O. Box 4210, Helena MT 59604-4210.

(2) There is no asset test to be eligible for a loan of specialized telecommunications equipment.

AUTH: 53-19-305, 53-19-307, MCA
IMP: 53-19-305, 53-19-307, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing an amendment to ARM 37.36.604 to align the requirements for the Montana Telecommunications Access Program (MTAP) with the 2022 United States Department of Health and Human Services Federal Poverty Level (FPL) index guidelines.

The following describes the purpose and necessity of the proposed rule amendment pertaining to this rule:

ARM 37.36.604

The department is proposing to amend ARM 37.36.604, pertaining to MTAP financial eligibility criteria. This rule sets forth the criteria that allow the department to pay for services being made available to persons who are eligible for MTAP. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule.

This rule amendment revises the maximum level of allowable income. Currently the rule provides that the maximum level is 250% of the 2021 United States Department of Health and Human Services poverty guidelines for households. This amendment would update the rule to coincide with 250% of the 2022 FPL.

The rule amendment would revise this level by replacing the year 2021 to indicate that the maximum level for income is 250% of the 2022 United States Department of Health and Human Services poverty guidelines for households, as detailed on the MTAP website or available by contacting MTAP. The updated, detailed income calculations by family size would be posted on the MTAP website, the likeliest place members of the public applying for assistance would look for this information. During the public comment period the proposed rates would be placed on the MTAP website as "proposed," until approved and adopted.

Fiscal Impact

There would be no fiscal impact due to the increase in the FPL. A minimal number of clients that are served by the MTAP exceed the FPL. The majority are well under the FPL. An increase in the FPL would be very minimal and most likely not yield any additional costs to the MTAP program.

The department intends for the proposed amendments to be effective the day after publication.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 24, 2022.

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

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

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

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

/s/ Aleea Sharp
Aleea Sharp
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State May 17, 2022.

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

In the matter of the repeal of ARM) NOTICE OF PUBLIC HEARING ON
37.78.1001, 37.78.1002, 37.78.1005,) PROPOSED REPEAL
37.78.1006, 37.78.1010, 37.78.1011,)
37.78.1012, 37.78.1013, and)
37.78.1014 pertaining to the Families)
Achieving Independence in Montana)
(FAIM) rules)

TO: All Concerned Persons

1. On June 16, 2022, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed repeal 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/82729472453?pwd=RzZxOFItWDRHSUU0YytlR1c0WEpCQT09>, meeting ID: 827 2947 2453, password 161509; or

(b) Dial by telephone +1 646 558 8656, meeting ID: 827 2947 2453, password 161509. Find your local number: <https://mt-gov.zoom.us/j/82729472453?pwd=RzZxOFItWDRHSUU0YytlR1c0WEpCQT09>.

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 June 2, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-6863; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The department proposes to repeal the following rules:

37.78.1001 FAIM FOOD STAMP PROGRAM: PURPOSE

AUTH: 53-2-201, 53-2-901, MCA
IMP: 53-2-901, MCA

37.78.1002 FAIM FOOD STAMP PROGRAM: DEFINITIONS

AUTH: 53-2-201, 53-2-901, MCA
IMP: 53-2-901, MCA

37.78.1005 FAIM FOOD STAMP PROGRAM: DETERMINING ELIGIBILITY
AND BENEFIT AMOUNT

AUTH: 53-2-201, 53-2-901, MCA
IMP: 53-2-901, MCA

37.78.1006 FAIM FOOD STAMP PROGRAM: REPORTING AND
VERIFICATION REQUIREMENTS

AUTH: 53-2-201, 53-2-901, MCA
IMP: 53-2-901, MCA

37.78.1010 FAIM FOOD STAMP PROGRAM: STANDARD UTILITY
ALLOWANCE

AUTH: 53-2-201, 53-2-901, MCA
IMP: 53-2-901, MCA

37.78.1011 FAIM FOOD STAMP PROGRAM: RESOURCES

AUTH: 53-2-201, 53-2-901, MCA
IMP: 53-2-901, 53-2-904, MCA

37.78.1012 FAIM FOOD STAMP PROGRAM: DEPENDENT CARE
DEDUCTION

AUTH: 53-2-201, 53-2-901, MCA
IMP: 53-2-901, MCA

37.78.1013 FAIM FOOD STAMP PROGRAM: UNEARNED INCOME
EXCLUSIONS

AUTH: 53-2-201, 53-2-901, MCA
IMP: 53-2-901, 53-2-904, MCA

37.78.1014 FAIM FOOD STAMP PROGRAM: EMPLOYMENT-RELATED
PAYMENTS

AUTH: 53-2-201, 53-2-901, MCA
IMP: 53-2-901, MCA

4. STATEMENT OF REASONABLE NECESSITY

The department proposes repealing these rules relating to FAIM. The Families Achieving Independence in Montana (FAIM) project was a demonstration project that ended in 2004. Removing rules specific to FAIM will reduce unneeded regulations.

Fiscal Impact

There is no fiscal impact anticipated.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 24, 2022.

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

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

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

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

/s/ Heidi Sanders

Heidi Sanders
Rule Reviewer

/s/ Adam Meier

Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State May 17, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.12.222 and 42.13.101) PROPOSED AMENDMENT
pertaining to department procedures)
involving penalties against alcoholic)
beverages licenses)

TO: All Concerned Persons

1. On June 22, 2022, 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 June 3, 2022. 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:

42.12.222 PROCEDURE UPON REVOCATION, LAPSE, OR SUSPENSION OF LICENSE (1) When any alcoholic beverages license is suspended or revoked by the department, the department shall cause a notice to be posted on the inside of the licensed premises so that the notice can be seen from the outside, stating that the license has been suspended or revoked. The notice must identify the number of the license, the name of the licensee, the reason for the suspension or revocation, and the period of suspension. The suspension or revocation notice issued by the department must be dated and signed. The notice must be posted at all times during the period of suspension. In the case of a revocation, the notice must be posted on the premises for a period of 10 days. If the notice is removed or caused to be removed by the licensee or any employee of the licensee during a period of suspension, the license shall be permanently revoked and the licensee must be so notified in writing at the time the notice is posted. The license or licenses suspended will be held by the department during the period of suspension. The department may waive the notice and posting requirements for revocations provided in this rule.

(2) A revoked or lapsed license affects a license quota area as follows:

(a) if an action against the license causes the creation of the last remaining license for that license type in the quota area, the department shall publish the

availability of a retail alcoholic beverage license in accordance with ARM 42.12.502; or

(b) if the number of licenses issued for a quota area exceeds statutory limitations, the license will cease to exist and the department will adjust the license quota accordingly.

(3) If a revoked or lapsed beer license originally issued within an incorporated city quota area before October 1, 1997, is reinstated, the license may not be used for premises where gambling is conducted.

AUTH: 16-1-303, MCA

IMP: 16-1-303, 16-4-406, 16-4-430, MCA

REASONABLE NECESSITY: The department proposes to amend (1) to include an exception to revocation notice posting requirements. The department finds the proposed amendments necessary to address circumstances where it may be impossible or impractical for the department to post a notice, such as when a licensee no longer operates the business associated with the license or, in the case of leased space, when an entirely different tenant and business occupies the space. The result will also allow the department to expedite quota area license adjustments described in proposed (2).

The department proposes (2) and (3), which comprise language relocated from ARM 42.13.101 to 42.12.222, to improve rule clarity through the removal of industry jargon, which is a department goal in the implementation of the Governor's Red Tape Relief Initiative. The amendments are topically better suited in ARM 42.12.222 than in ARM 42.13.101.

The department proposes (2)(a) to align department processes for a last available license based on a revocation or lapse with the competitive bidding process provided in 16-4-430, MCA, and ARM 42.12.502. Section 16-4-430, MCA, requires licenses available under these circumstances to go through the competitive bidding process.

Lastly, the department has added 16-4-430, MCA, as an implementing citation which is necessary for the rule to comply with 2-4-305(3), MCA.

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) remains the same.

(2) Proof of violation by a licensee, a concessionaire, or the licensee's or concessionaire's agent or employee of any of the provisions of the above laws, ordinances, or rules is sufficient grounds for revocation or suspension of the license or ~~department~~ termination of a concession agreement, and a licensee, a concessionaire, or both, may be reprimanded or assessed a civil penalty in accordance with 16-4-406, MCA.

(3) The department may use a range of progressive and proportional penalties for any combination of violations of any laws, ordinances, and rules. The progressive penalty schedule is not an exhaustive list of the grounds for administrative action. The schedule does not preclude the department's use of discretion to propose a penalty greater or less than those listed based upon aggravating or mitigating circumstances, non-exhaustive examples of which are described in ~~(10)~~ (4) and ~~(11)~~ (5). For purposes of determining penalties under the

progressive penalty schedule, the department uses a three-year lookback. Proposed penalties are assessed based upon the date the violation occurs. For violations that occur over time, such as an undisclosed ownership interest, the violation date shall be the date the department issues its notice of proposed department action. ~~The department may seek license revocation based upon a combination of any four violations during a three-year period.~~ If a violation jeopardizes health, welfare, and safety, or there is not a cure in place, the department may revoke or refuse to grant the renewal of a license, concession agreement, or both.

Progressive Penalty Schedule

Violation	1st Offense	2nd Offense	3rd Offense	4th Offense
Sale to Underage Person	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Sale to Intoxicated Person	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Open after Hours	\$150	\$600	\$1,000/12-day Suspension	Revocation
Sale or Consumption after Hours	\$150	\$600	\$1,000/12-day Suspension	Revocation
Refilling of Bottles	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Unapproved Premises Alteration	\$300	\$600	\$1,000/12-day Suspension	Revocation
Undisclosed Location Manager	\$150	\$600	\$1,000/12-day Suspension	Revocation
Improper Use of Catering Endorsement	\$150	\$600	\$1,000/12-day Suspension	Revocation
Accept More than 7 Days Credit	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Extend More than 7 Days Credit	\$250	\$1,000	\$1,500/20-day Suspension	Revocation

Exceed Sample Room Service Limits	\$150	\$600	\$1,000/12-day Suspension	Revocation
Undisclosed Ownership Interest	\$1,500/Revocation			
Denial of Inspection of Premises or Records	\$1,500/Revocation			

<u>Violation</u>	<u>Penalty</u>
<u>1st Violation</u>	<u>Up to a \$250 monetary penalty</u>
<u>2nd Violation</u>	<u>Up to a \$600 monetary penalty</u>
<u>3rd Violation</u>	<u>Up to a \$1,000 monetary penalty, up to a 2-day suspension, or both</u>
<u>4th Violation</u>	<u>Up to a \$1,500 monetary penalty, up to a 5-day suspension, or both</u>
<u>5th Violation</u>	<u>Up to a \$1,500 monetary penalty, up to a 7-day suspension, or both</u>
<u>Subsequent Violations</u>	<u>In accordance with 16-4-406, MCA</u>

~~(4) When a license has been revoked or lapsed, the department shall not accept an application from those owners vetted pursuant to 16-4-401, MCA, for one year from the date of revocation or lapse. After the one-year moratorium, an application will only be accepted if the applicant demonstrates to the department's satisfaction that sufficient steps were taken to prevent future violations or to operate a going establishment.~~

~~(5) A revoked or lapsed license affects a license quota area as follows:~~

~~(a) if it causes the area to be under quota, a notice of availability of a license will be published in the newspaper of general circulation in the quota area and invite applications for the available license; or~~

~~(b) if the area is over quota, the revoked or lapsed license will cease to be available for issuance.~~

~~(6) A revoked or lapsed beer license issued within a city quota area before October 1997, if reinstated, will not allow any gaming or gambling activity on the premises.~~

~~(7) The failure of an employee to possess a valid alcohol server training certificate constitutes a violation, the penalty for which is assessed against the licensee. Multiple untrained employees on a particular date shall constitute a single violation; continued noncompliance shall constitute an additional violation. Regardless of other violations within the three-year period, the civil penalties assessed for a violation of the Responsible Alcohol Sales and Service Act shall be \$50 for the first offense, \$200 for the second offense, and \$350 for the third offense.~~

~~(8) A licensee shall receive a reprimand for the violation of selling to an underage person only if:~~

~~(a) it is the licensee's first offense of any kind under that license in the past three years;~~

~~(b) the person who made the sale possesses a valid proof of training document; and~~

~~(c) the licensee has not previously received a reprimand for sale to an underage person under that license.~~

~~(9) In the event a reprimand is issued:~~

~~(a) the incident shall not be considered to be a first offense for purposes of the progressive penalty schedule unless the licensee or concessionaire commits the same offense within one year; and~~

~~(b) the department shall still assess the monetary penalty associated with the offense.~~

~~(10)~~ (4) Aggravating circumstances may result in the imposition of maximum monetary penalties, maximum suspension time or revocation, and will not bind the department to the progressive penalty schedule. Aggravating circumstances include, but are not limited to:

(a) and (b) remain the same.

(c) involvement of a licensee, a location manager, a concessionaire, or both a combination thereof, in the violation;

(d) and (e) remain the same.

(f) lack of cooperation by a licensee, a location manager, a concessionaire, or both a combination thereof, in an investigation; and

(g) a violation's significant negative effect on the health, and welfare, and safety of the community in which the licensee, the concessionaire, or both, operate; and

(h) those instances provided in 16-4-406, MCA.

~~(11)~~ (5) Mitigating circumstances may result in the adjustment of monetary penalties, amount of suspension time, or revocation, and will not bind the department to the progressive penalty schedule. Mitigating circumstances include, but are not limited to:

(a) the admissions of either the licensee, a location manager, or concessionaire regarding violations of the code or a rule of the department prior to the department commencing investigation of the licensee or concessionaire; or and

(b) remains the same.

(12) remains the same, but is renumbered (6).

AUTH: 16-1-303, ~~16-4-1009~~, MCA;

IMP: 16-1-302, 16-3-301, 16-4-406, ~~16-4-1004~~, ~~16-4-1008~~, 16-6-314, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.101 primarily for the implementation of House Bill 705 (2021).

Section (3) is proposed for amendment due to statutory change in penalties the department may propose when a licensee or concessionaire has violated a provision of the Montana Alcoholic Beverage Code. Amendments to (3) reflect new requirements found in 16-4-406(2), MCA, that revocations or refusals to renew a license or concession agreement occur only when a violation jeopardizes health, welfare, and safety, or there is not a cure in place. Further, the department finds that the existing progressive penalty schedule does not adequately represent the new penalty structure of 16-4-406(2), MCA. The proposed amendment of the progressive penalty schedule is also consistent with industry feedback that the existing system is too inflexible, does not take into consideration the public harm, or lack thereof, associated with the violation, and suspension or revocation of the license is administratively required, regardless of the types of violations the licensee committed. Penalties are now determined in accordance with a new progressive penalty schedule which allows the department flexibility to consider the public harm of a violation, or lack thereof. A representative example might be where a licensee had two prior violations in the last three years and submitted a catering report five days late. Under the current progressive penalty schedule as a third offense, the department would have been administratively required to pursue a \$1,000 penalty and a 12-day suspension. With the amendment of the progressive penalty schedule, the department may exercise its discretion to consider a less severe penalty.

After additional legal review of statutory penalty provisions, the department also proposes the removal of current (4) which is inconsistent with 16-4-408, MCA.

As described in the statement of reasonable necessity for the amendments to ARM 42.12.222, the department proposes to relocate the content of current (5) and (6) into ARM 42.12.222.

The department proposes to remove current (7) because the penalties prescribed for failing to possess valid alcohol server training are present in 16-4-1008, MCA.

Sections (8) and (9) are no longer necessary and are proposed for removal because the department may exercise its discretion to reprimand licensees and concessionaires for violations under 16-4-406(2)(a), MCA, and because certain contrived events are excluded from penalties with the passage of Senate Bill 129 (2021) which are administered in accordance with 16-4-406(5), MCA.

The department proposes to amend proposed (4)(c) and (4)(f) to add a location manager's involvement in a violation or lack of cooperation in an investigation as aggravating circumstances because location managers are responsible for providing general oversight of the alcoholic beverage operations and ensuring compliance with alcoholic beverage laws and regulations. The department believes it is necessary to inform licensees, and those employed as location managers, that the department considers this non-compliance as an aggravating circumstance. Section (4)(g) proposes to include safety of the community to conform to HB 705. Section (4)(h) proposes to include the statutory aggravating

circumstances for necessary attribution to statute and to inform licensees that the aggravating circumstances are not limited to those described in rule.

The department proposes to amend proposed (5)(a) to add a location manager's admission prior to the commencement of an investigation as a mitigating circumstance because location managers are responsible for providing general oversight of the alcoholic beverage operations and ensuring compliance with alcoholic beverage laws and regulations.

Lastly, the department is removing the Responsible Alcohol Sales and Service Act (RASS) implementing citations for this rule, which is necessary because the penalties for violations of RASS are included in that Act.

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., June 30, 2022.

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 primary bill sponsor of House Bill 705, Representative Buttrey, was contacted by email on July 21, 2021 and May 13, 2022. The primary bill sponsor of Senate Bill 129, Senator Hertz, was contacted by email on February 3, 2022.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules may significantly and directly impact small businesses, but the department contends the impacts are attributable to the implementation of HB 705 and SB 129 but any impacts based on the proposed rules are likely to be positive in nature due to simplified and more flexible penalty process.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State May 17, 2022.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 2.12.204 and 2.12.205	)	REPEAL
pertaining to the review and approval)	
process for procurement,)	
development, and oversight of)	
information technology resources and)	
software and management systems,)	
and granting exceptions; and the)	
repeal of ARM 2.12.101, 2.12.201,)	
2.12.202, 2.12.203, 2.12.206, and)	
2.12.207 pertaining to the utilization)	
of centralized state facilities,)	
introduction, definitions, agency)	
information technology plans,)	
establishing policies, standards,)	
procedures, and guidelines, and the)	
appeal process as it applies to)	
information technology plans,)	
procurements, and granting)	
exceptions)	

TO: All Concerned Persons

1. On April 15, 2022, the Department of Administration published MAR Notice No. 2-12-623 pertaining to the proposed amendment and repeal of the above-stated rules at page 430 of the 2022 Montana Administrative Register, Issue Number 7.

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

3. No comments were received.

By: /s/ Don Harris
Don Harris
Rule Reviewer

By: /s/ Misty Ann Giles
Misty Ann Giles
Director
Department of Administration

Certified to the Secretary of State May 17, 2022.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On April 15, 2022, the Department of Agriculture published MAR Notice No. 4-22-274 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 435 of the 2022 Montana Administrative Register, Issue Number 7.

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

3. No comments or testimony were received.

4. The effective date of the amended rule is July 1, 2022.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Christy Clark
Christy Clark
Director
Agriculture

Certified to the Secretary of State May 17, 2022.

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

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rule I pertaining to Credit for) AMENDMENT
Reinsurance – Reciprocal)
Jurisdictions and the amendment of)
ARM 6.6.3814 pertaining to Forms)

TO: All Concerned Persons

1. On April 15, 2022, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-267 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 444 of the 2022 Montana Administrative Register, Issue Number 7.

2. On May 5, 2022, a public hearing was held in person and electronically to consider the rulemaking. The department received no comments or testimony on the proposed new or amended rules.

3. CSI has adopted New Rule I (ARM 6.6.3851) as proposed.

4. CSI has amended ARM 6.6.3814 as proposed.

/s/ Kirsten Madsen
Kirsten Madsen
Rule Reviewer

/s/ Ole Olson
Ole Olson
Chief Legal Counsel
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State May 17, 2022.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption NEW	)	NOTICE OF ADOPTION,
RULES I and II; the amendment	)	AMENDMENT, AND REPEAL
of ARM 10.57.102, 10.57.107,)	
10.57.109, 10.57.112,)	
10.57.201A, 10.57.215,)	
10.57.216, 10.57.217, 10.57.218,)	
10.57.301, 10.57.410, 10.57.411,)	
10.57.412, 10.57.413, 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, 10.57.433,)	
10.57.434, 10.57.435, 10.57.436,)	
10.57.437, 10.57.601A,)	
10.57.601B, 10.57.607; and the)	
repeal of ARM 10.57.416,)	
10.57.417, 10.57.426, 10.57.429,)	
and 10.57.430 pertaining to)	
Teacher Licensing)	

TO: All Concerned Persons

1. On January 28, 2022, the Board of Public Education (board) published MAR Notice No. 10-57-288 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 103 of the 2022 Montana Administrative Register, Issue Number 2.

2. The board has repealed the following rules as proposed: ARM 10.57.416, 10.57.417, 10.57.426, 10.57.429, and 10.57.430.

3. The board has adopted the following rule as proposed: NEW RULE II (ARM 10.57.222).

4. The board has amended the following rules as proposed: ARM 10.57.109, 10.57.112, 10.57.201A, 10.57.216, 10.57.217, 10.57.218, 10.57.411, 10.57.412, 10.57.413, 10.57.415, 10.57.421, 10.57.425, 10.57.428, 10.57.432, 10.57.433, 10.57.601A, 10.57.601B, and 10.57.607, to be effective upon adoption.

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

NEW RULE I (10.57.221) RECIPROCITY FOR MILITARY
SPOUSES/DEPENDENTS (1) and (2) remain as proposed.

- (3) The applicant must:
- (a) be the spouse and/or a dependent of an active-duty member of the United States armed forces who has been transferred to Montana, is scheduled to be transferred to Montana, is domiciled in Montana, or has moved to Montana on a permanent change-of-station basis; and
 - (b) remains as proposed.
 - (c) An applicant for a Class 3 administrative license must submit verified completion of the requirements of ARM ~~10.57.415~~ 10.57.413.

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

IMP: Mont. Const. Art. X, sec. 9, 20-4-103, 20-4-106, MCA

6. The board has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

10.57.102 DEFINITIONS The following definitions apply to this chapter.

- (1) remains as proposed.
- ~~(2) "Accredited educator preparation program" means:~~
 - ~~(a) an educator preparation program accredited by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) or the Montessori Accreditation Council for Teacher Education (MACTE). A MACTE educator preparation program is subject to the following restrictions:~~
 - ~~(i) Completion of a MACTE accredited program may only be used by an applicant for licensure who has also completed at least a bachelor's degree; and~~
 - ~~(ii) The resulting license granted to an applicant for licensure who has completed a MACTE accredited program shall be limited to early grades or middle grades licensure and only for the grade levels covered by the MACTE accredited program completed by the applicant.~~
 - (3) through (5) remain as proposed but are renumbered (2) through (4).
 - ~~(6) (5) "Approved preparation program" means: an educator preparation program approved by a state board of education or a state agency that leads to licensure in the state of preparation.~~
 - (a) An educator preparation program accredited by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) or the Montessori Accreditation Council for Teacher Education (MACTE). A MACTE educator preparation program is subject to the following restrictions:
 - (i) Completion of a MACTE accredited program may only be used by an applicant for licensure who has also completed at least a bachelor's degree; and
 - (ii) The resulting license granted to an applicant for licensure who has completed a MACTE accredited program shall be limited to early grades or middle grades licensure and only for the grade levels covered by the MACTE accredited program completed by the applicant; or

(b) An educator preparation program at a regionally 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.

~~(7)~~ (6) "Certification" means licensure of an educator/specialist, as issued by the state of Montana, based on completion of a teacher, administrator, or specialist program of an accredited college or university approved educator preparation program. Certification includes grade level(s), endorsement(s), and classification.

(8) remains as proposed but is renumbered (7).

~~(9)~~ (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 regionally accredited college or university. The weights reflect the relative contributions of teacher education program course requirements measured in arbitrary units, called credit value, based on contact hours or presumed total student workload, including content area coursework, based on contact hours or credits earned. The weighted average is calculated as follows:

(a) For each course required by the program, multiply the numeric grade value earned by the number of credits for the course;

(b) Sum the products for all the courses included in (a); and

(c) Divide the sum calculated in (b) by the total credits for all the required courses.

(10) and (11) remain as proposed but are renumbered (9) and (10).

~~(12)~~ (11) "Lapsed license" means:

(a) the licensee has not earned the required number of renewal professional development units during the term of the license; or

(b) the licensee has earned the required number of renewal professional development units during the term of the license but has not renewed the license by June 30 following the year of expiration.

(13) remains as proposed but is renumbered (12).

(13) "Military dependent" means an adult dependent of a member of the armed forces of the United States, or a reserve component of the armed forces of the United States, stationed in Montana in accordance with military orders or stationed in Montana before a temporary assignment to duties outside of the state.

(14) remains as proposed.

~~(15) "Student-teaching portfolio" is means a collection of artifacts to document evidence of student learning outcomes for teacher education program course requirements.~~ type of performance assessment that asks candidates to demonstrate what they have learned, how they engage in the learning process, and how they apply their knowledge demonstrating their preparedness for the teaching profession.

(16) and (17) remain as proposed.

(18) "Year of administrative experience" means employment as a licensed administrator at any level within a P-12 school system, or in an educational institution specified in 20-9-707, MCA, for a minimum of a 180-day school year or its equivalent in minimum aggregate hours as defined by 20-1-301, MCA, and during that year, must have been at least a 0.5 full time employee (FTE). Experience as a County

Superintendent may be considered as "administrative" experience with evidence of the following:

(a) and (b) remain as proposed.

(19) "Year of teaching experience" means employment as a licensed teacher at any level within a P-12 school system, or in an educational institution specified in 20-9-707, MCA, for a minimum of a 180-day school year or its equivalent in minimum aggregate hours as defined by 20-1-301, MCA, and during that year, must have been at least a 0.5 full time employee (FTE). Experience gained prior to initial licensure is not considered.

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

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

10.57.107 EMERGENCY AUTHORIZATION OF EMPLOYMENT (1) In accordance with 20-4-111, MCA, district administrators who have exhausted all possibilities for hiring a licensed teacher may request that the Superintendent of Public Instruction issue an emergency authorization of employment to the district to employ a person to teach. The following requirements must be met to ensure ~~consideration~~ approval of the request:

(a) remains as proposed.

(b) The position must have been advertised at least statewide far enough in advance to reasonably enable qualified applicants to submit applications and be interviewed. The obligation of a statewide advertisement may be satisfied through any reasonable means, including use of the Montana Jobs for Teachers Service of the Office of Public Instruction.

(c) The individual for whom the emergency authorization is being sought ~~shall not be currently endorsed in the area of requested authorization and shall:~~

(i) through (iv) remain as proposed.

(2) An emergency authorization of employment is valid for one year and is eligible for continued authorization from year to year depending on satisfaction of conditions set forth in this rule.

(3) and (4) remain as proposed.

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

IMP: Mont. Const. Art. X, sec. 9, 20-4-111, MCA

10.57.215 PROFESSIONAL DEVELOPMENT AND RENEWAL REQUIREMENTS (1) remains as proposed.

(a) Applicants for an initial Montana Class 1, 2, 3, and 6 license whose degree is more than five years old and who do not have a current out-of-state ~~license~~ license may be issued with verification of 60 professional development units earned within the five-year period preceding the effective date of the license.

(2) through (5) remain as proposed.

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

10.57.301 ENDORSEMENT INFORMATION (1) through (3) remain as proposed.

(a) ~~Endorsement program completion and recommendation for the endorsement from the appropriate official from an approved professional program, and Completion of a program of study as verified by the appropriate official, defined in ARM 10.57.102; and~~

(i) through (4) remain as proposed.

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

IMP: Mont. Const. Art. X, sec. 9, 20-4-103, 20-4-106, MCA

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

(iii) a 3.00 or higher course work grade point average (GPA) as defined in ARM 10.57.102 and verified by the appropriate official from the educator preparation program; or

(iv) verified completion of an educator preparation program, a current standard, unrestricted out-of-state educator license, and two years of successful teaching experience as defined in ARM 10.57.102 as documented by a recommendation from the out-of-state P-12 school employer on a form prescribed by the superintendent of public instruction.

(4) and (5) remain as proposed.

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

10.57.414 CLASS 3 ADMINISTRATIVE LICENSE - SUPERINTENDENT ENDORSEMENT (1) through (1)(b) remain as proposed.

(c) ~~completion of courses covering Montana requirements through online professional development courses or graduate coursework in each of the following areas: School Finance, Montana School Law, and Montana Collective Bargaining and Employment Law. In order to qualify, such courses must have been provided either by:~~

(i) ~~Montana school law; and~~ an approved professional development provider pursuant to ARM 10.57.216; or

(ii) ~~Montana school finance; and~~ an approved school administrator preparation program;

(iii) ~~Montana collective bargaining and employment law;~~

(d) through (g) remain as proposed.

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) through (1)(b) remain as proposed.

- (c) eligibility ~~requirements~~ for a Class 1 or Class 2 teaching license endorsed in the field of specialization or Class 6 school counseling license;
- (d) through (f) remain as proposed.

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) through (1)(b) remain as proposed.

- (c) three years of teaching experience or three years of experience in a P-12 school setting with a standard, unrestricted license as a fully licensed and assigned related services provider;
- (d) through (g) remain as proposed.

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 as proposed.
- (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 regionally 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 as proposed.

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) remains as proposed.

(2) A Montana educator may be issued only one Class 5 provisional license per teaching license (Class 1 or 2), administrator license (Class 3), or specialist license (Class 6). A Class 5 provisional license is not available for an initial Class 4 license or a Class 7 or 8 license.

(2) remains as proposed but is renumbered (3).

~~(3)(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 regionally accredited college or university but have not completed an approved educator preparation program. ~~A Montana educator may be issued only one Class 5 provisional license per teaching license (Class 1 or 2), administrator license (Class 3), or specialist license (Class 6). A Class 5 provisional license is not available for an initial Class 4 license or a Class 7 or 8 license.~~

(a) remains as proposed.

(4) through (5)(a) remain as proposed but are renumbered (5) through (6)(a).

(b) a current Montana address or job offer from a ~~state-funded~~ P-12 school in Montana; and

(c) remains as proposed.

(6) remains as proposed but is renumbered (7).

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) through (1)(e) remain as proposed.

(f) for those applicants who have not completed the courses covering Montana requirements through online professional development courses or graduate coursework in each of the following areas: School Finance, Montana School Law, and Montana Collective Bargaining and Employment Law, in order to qualify, such courses must have been provided either by:

(i) Montana school law; and an approved professional development provider pursuant to ARM 10.57.216; or

(ii) Montana school finance; and an approved school administrator preparation program.

~~(iii) Montana collective bargaining and employment law;~~

(2) remains as proposed.

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) and (1)(a) remain as proposed.

(b) three years of appropriately licensed experiences as a teacher or counselor in the area requested for supervisory endorsement or three years of experience in a P-12 school setting as a fully licensed and appropriately assigned related services provider; and

(c) remains as proposed.

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) and (1)(a) remain as proposed.

(b) completion of a specialist level degree from a NASP accredited school psychologist program which included a 1200-hour internship, of which 600 hours were in a P-12 school setting; or

(c) and (c)(i) remain as proposed.

(ii) recommendation from a NASP accredited 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.

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) and (1)(a) remain as proposed.

(b) completion of a CACREP accredited school counselor program which included an internship in a P-12 school setting of 600 hours; or

(c) and (c)(i) remain as proposed.

(ii) recommendation from an approved specialist program defined in ARM 10.57.102, which included 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

10.57.436 CLASS 7 AMERICAN INDIAN LANGUAGE AND CULTURE SPECIALIST (1) A Class 7 American Indian language and culture specialist license is valid for a period of five years ~~the lifetime of the license holder~~.

(2) through (5) remain as proposed.

(6) A Class 7 American Indian language and culture specialist license may be renewed upon meeting the terms of the renewal as provided in the memorandum of understanding in (2).

(6) remains as proposed but is renumbered (7).

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

IMP: Mont. Const. Art. X, sec. 9, 20-4-103, 20-4-106, MCA

10.57.437 CLASS 8 DUAL CREDIT POSTSECONDARY FACULTY LICENSE (1) through (3)(a) remain as proposed.

(b) compliance with all other nonacademic requirements for licensure as required by 20-4-104, MCA, ARM 10.57.201, and 10.57.201A; and

(c) recommendation from the Chief Academic Officer from a regionally accredited college or university verifying ~~the following:~~ 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

~~(i) 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) through (6) remain as proposed.

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

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

COMMENT 1: Sixteen commenters, including NWMASS and MTPEC, supported licensure reciprocity for military spouses in New Rule I.

COMMENT 2: The Board Licensure Committee commented that the term "military dependent" in New Rule I should be defined and worked with Malmstrom Air Force Base to suggest the following definition: "Military dependent" is an adult dependent of a member of the armed forces of the United States or a reserve component of the armed forces of the United States stationed in Montana in accordance with military orders or stationed in Montana before a temporary assignment to duties outside of the state.

COMMENT 3: CSPAC recommended the Board either define the use of "dependents" or remove the new rule entirely in New Rule I.

COMMENT 4: The Governor's Office and Republican legislators commented that they support automatic reciprocity for military spouses and dependents in New Rule I and would encourage the board and OPI to enter into multi-state reciprocity agreements with states who have similar licensing standards to Montana.

RESPONSE to COMMENTS 1-4: The Board of Public Education agreed with Comments 1-4 in regard to New Rule I, with the exception that the reference in New Rule I(3)(c) refers to ARM 10.57.413, not ARM 10.57.415.

COMMENT 5: Fourteen commenters, including NWMASS and MTPEC, oppose proposed New Rule II, as it is duplicative and allows the superintendent to change rules, which are covered under other proposed rules.

RESPONSE: The Board of Public Education disagreed with the commenters, as this information is already allowable in ARM 10.57.102(3)(b)(ii).

COMMENT 6: Fourteen commenters, including NWMASS and MTPEC, support the following proposed changes in ARM 10.57.102:

(2)(b): Accredited educator preparation program—suggested the board remove the stricken language in the first sentence to read "an educator preparation program at a regionally accredited college or university approved or accredited by a state board of education or a state education agency"

(3)(b)(ii): Accredited educator preparation program—suggested the board include education to read "state education agency"

(4): Age 3-21—suggested the board add a new definition for "Age 3-21" which would be defined as, "denotes a scope of service to children by licensed educators beginning at age 3, including preschools, kindergartens, and other early childhood programs authorized by law and continuing through the age of 21 under circumstances authorized by law"

COMMENT 7: CSPAC recommended support of the changes from grade to age in ARM 10.57.102(4).

COMMENT 8: The Governor's Office disagreed with changes in ARM 10.57.102(4) and stated that licensure definitions are commonly described by grade levels.

(6): Approved preparation program—suggested changing the definition to "means an accredited educator preparation program as defined in (2) of this rule.

(10): Endorsement-

(a) change to "Age 3-Grade 3 (early childhood programs, including preschool or other early childhood programs authorized under exceptional circumstances pursuant to 20-5-101)";

(f) change to "Age 3-21"

COMMENT 9: CSPAC recommended support of the changes from grade to age in ARM 10.57.102(10).

COMMENT 10: The Governor's Office disagreed with changes in ARM 10.57.102(10) and stated that licensure definitions are commonly described by grade levels.

(18): Year of administrative experience—suggested changing the definition to "Age 3-21" and "for the equivalent of at least .5 full time employee (FTE) for a school year comparable to a 180-day school year.

COMMENT 11: CSPAC recommended support of the changes from grade to age in ARM 10.57.102(18).

COMMENT 12: The Governor's Office disagreed with changes in ARM 10.57.102(18) and stated that licensure definitions are commonly described by grade levels.

(19): Year of teaching experience—suggested changing the definition to "Age 3-21" and "for the equivalent of at least .5 full time employee (FTE) for a school year comparable to a 180-day school year. Experience gained prior to initial licensure is not considered unless such experience is gained as a student teacher engaged in "supervised teaching experience" as defined in ARM 10.57.102(16)"

COMMENT 13: CSPAC recommended support of the changes from grade to age in ARM 10.57.102(19).

COMMENT 14: The Governor's Office disagreed with changes in ARM 10.57.102(19) and stated that licensure definitions are commonly described by grade levels.

RESPONSE to COMMENTS 6-14: The Board of Public Education recognized Comments 6-14 and disagreed with the proposed changes, with the exception that the board agreed with the Governor's Office's opposition to the MTPEC recommendation to move from grade to age.

COMMENT 15: Sixteen commenters, including the MCDE, are concerned by the replacement of "accredited professional educator preparation program" with "approved educator preparation program" in ARM 10.57.102.

COMMENT 16: The MCDE commented that by approving the superintendent's proposed revisions, Montana EPPs are being held to higher standards set forth in Chapter 58 and those from out-of-state who have not completed accredited programs. Additionally, they suggest trusting data that shows alternatively prepared teachers from approved programs are more likely to leave the profession.

RESPONSE to COMMENTS 15-16: The Board of Public Education appreciates Comments 15 and 16 and thanked MCDE for voicing concerns and believes that the proposed definition, as currently written in ARM 10.57.102(5), is a compromise between all parties.

COMMENT 17: CSPAC recommended the board consult with MCDE to define "approved program" and outline more clearly what that is and how it differs from "accredited program" under ARM 10.57.102.

COMMENT 18: One commenter and the Governor's Office supported adding the proposed definition for approved educator preparation programs and accredited programs in ARM 10.57.102 and recognizes the diverse ways in which educators gain experience and can be licensed.

COMMENT 19: The Board Licensure Committee commented that the definition of ARM 10.57.102(2) "Accredited preparation program" should be struck and instead included under the new definition for (6) "Approved educator preparation program," which is the umbrella term for traditional and alternate educator preparation programs. They proposed the following definition: "Approved educator preparation program" means: (a) an educator preparation program accredited by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) or the Montessori Accreditation Council for Teacher Education (MACTE). A MACTE educator preparation program is subject to the following restrictions: (i) Completion of a MACTE accredited program may only be used by an applicant for licensure who has also completed at least a bachelor's degree; and (ii) The resulting license granted to an applicant for licensure who has completed a MACTE accredited program shall be limited to early grades or middle grades licensure and only for the grade levels covered by the MACTE accredited program completed by the applicant then a (accredited/traditional); or (b) an educator preparation program at a regionally 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.

RESPONSE to COMMENTS 17-19: The Board of Public Education agreed with Comments 17-19 and thanked the Board Licensure Committee for bringing forward a solution that encompasses all educator preparation program pathways. The board has incorporated the new definition under Comment 19 in ARM 10.57.102(5).

COMMENT 20: The Board Licensure Committee commented that the definition of ARM 10.57.102(7) "Certification" was not revised consistent with the proposed changes in the rest of ARM. They recommended the use of the term "approved" in place of "accredited." They've suggested the following definition: "Certification" means licensure of an educator/specialist, as issued by the state of Montana, based on completion of a teacher, administrator, or specialist program of an approved educator preparation program. Certification includes grade level(s), endorsement(s), and classification.

RESPONSE: The Board of Public Education agreed with the Board Licensure Committee and thanked them for bringing language consistent with other proposed changes. The board has incorporated this new definition in ARM 10.57.102(6).

COMMENT 21: The Board Licensure Committee commented that the definition of ARM 10.57.102(9) "Coursework GPA" is confusing. They suggested the following definition: "Coursework 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 regionally 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) For each course required by the program, multiply the numeric grade value earned by the number of credits for the course; (b) Sum the products for all the courses included in (a); and (c) Divide the sum calculated in (b) by the total credits for all the required courses.

RESPONSE: The Board of Public Education agreed with the Board Licensure Committee and thanked them for bringing proposed language to define Coursework GPA. The board has incorporated this new definition in ARM 10.57.102(8).

COMMENT 22: The Board Licensure Committee commented that the definition of ARM 10.57.102(12) "Lapsed license" still refers to "renewal units" in (a) and (b). They suggested removing "renewal" and inserting "professional development" to be consistent with the other proposed changes.

RESPONSE: The Board of Public Education agreed with the Board Licensure Committee and thanked them for the proposed language. The board has made these corrections in ARM 10.57.102(11).

COMMENT 23: The Board Licensure Committee commented that in the proposed definition of ARM 10.57.102(15) "Student-teaching portfolio," it is unclear whether student learning outcomes refers to the learning outcomes for the teaching candidate or the students in the K-12 classroom. They suggested the following definition: "Student-teaching portfolio" is a type of performance assessment that asks students to demonstrate what they have learned, how they engage in the learning process, and how they apply their knowledge demonstrating their preparedness for the teaching profession.

COMMENT 24: CSPAC recommended the board work with the MCDE to define "student teaching portfolio" in ARM 10.57.102(15).

COMMENT 25: The Governor's Office commented that student-teaching portfolio as defined in ARM 10.57.102(15) recognizes the diverse ways educators can demonstrate their knowledge and skills.

RESPONSE to COMMENTS 23-25: The Board of Public Education agreed with Comments 23-25 and thanked the Board Licensure Committee for bringing a proposed definition. The board has incorporated these recommendations in the new definition for ARM 10.57.102(15).

COMMENT 26: The Board Licensure Committee commented that the definition of (17) "Unrestricted license" is confusing and leaves out lifetime licenses. They have suggested the following language: "Unrestricted license" means a current renewable or lifetime license.

RESPONSE: The Board of Public Education initially agreed with the changes from the Board Licensure Committee, as the proposed definition from the superintendent conflicted with her original recommendation for the Class 7 License to be a lifetime license. The board approved MACIE's recommendation to revert to the current rule that requires the renewal process for the Class 7 license; therefore, the definition of unrestricted license is no longer needed to include lifetime licenses. The board has reverted to the superintendent's original recommendation that reads, ARM 10.57.102(17) "Unrestricted License" means a current renewable license that is not an emergency or provisional license.

COMMENT 27: The Board Licensure Committee commented that the proposed definition for ARM 10.57.102(18) "Year of administrative experience" refers to a 180-day school year. Given that many schools operate on a 4-day school week, they recommended the following language: "Year of administrative experience" means employment as a licensed administrator at any level... for a minimum of a 180-day school year, or its equivalent in minimum aggregate hours as defined by 20-1-301, MCA, and during that year, must have been at least a 0.5 full-time employee (FTE).

COMMENT 28: The Board Licensure Committee commented that the proposed definition for ARM 10.57.102(19) "Year of teaching experience" refers to a 180-day school year. Given that many schools operate on a 4-day school week, they recommended the following language: "Year of administrative experience" means employment as a licensed teacher at any level... for a minimum of a 180-day school year, or its equivalent in minimum aggregate hours as defined by 20-1-301, MCA, and during that year, must have been at least a 0.5 full-time employee (FTE).

RESPONSE to COMMENTS 27-28: The Board of Public Education agreed with Comments 27 and 28 and thanked the Board Licensure Committee for providing a proposed definition that is inclusive to school districts with 4-day school weeks. The board has incorporated these changes in ARM 10.57.102(18) and (19)

COMMENT 29: Thirteen commenters, including NWMASS and MTPEC, support the following proposed changes in ARM 10.57.107:

(1): suggested an edit to the last sentence to strike "consideration" and insert "approval"

(1)(b): added a sentence that reads "The obligation of a statewide advertisement may be satisfied through any reasonable means, including use of the Montana jobs for teachers service of the Office of Public Instruction"

COMMENT 30: CSPAC agreed with MTPEC's recommendation in ARM 10.57.107(1)(b).

(1)(c): struck "shall not be currently endorsed in the area of a requested authorization"

(2): added to the end of the sentence to read "...and is eligible for continued authorization from year to year depending on satisfaction of conditions set forth in this rule"

COMMENT 31: CSPAC agreed with MTPEC's recommendation in ARM 10.57.107(2).

COMMENT 32: CSPAC recommended the board accept the superintendent's recommendation in ARM 10.57.107(1)(c)(iv) and (4).

RESPONSE to COMMENTS 29-32: The Board of Public Education agreed with Comments 29-32 and thanked CSPAC for their support of the recommendations. The board has incorporated these changes in ARM 10.57.107.

COMMENT 33: Twelve commenters, including the Governor's Office, NWMASS, and MTPEC, agreed with the proposed changes in ARM 10.57.109.

RESPONSE: The Board of Public Education agreed with the commenters to ARM 10.57.109 and accepted the rule as proposed by the superintendent.

COMMENT 34: Two commenters concurred with the task force recommendation in ARM 10.57.109, rather than the superintendent's recommendation, and stated the board does not have the authority to abdicate its responsibility.

COMMENT 35: One commenter stated that the superintendent should not decide on certification for unusual cases in ARM 10.57.109, as it paves the way for partisan politics to enter the process.

RESPONSE to COMMENTS 34-35: The Board of Public Education disagreed with Comments 34 and 35 and noted that OPI convenes an Education Licensure Review Committee that reviews licensure applications and finds appropriate resolution to recommend to the superintendent. Though the board takes their responsibility very

seriously, they believe this OPI Review Committee is sufficient to review and recommend unusual cases.

COMMENT 36: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.112.

RESPONSE: The Board of Public Education agreed with the commenters to ARM 10.57.112 and accepted the rule as proposed by the superintendent.

COMMENT 37: One commenter stated that the proposed language in ARM 10.57.112 does not specify which Class 5 license the exchange teacher is eligible for.

RESPONSE: The Board of Public Education thanked the commenter for their input in ARM 10.57.112 and explained that the appropriate Class 5 license would be issued based on the educators' qualifications.

COMMENT 38: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.201A.

RESPONSE: The Board of Public Education agreed with the commenters and accepted the rule as proposed by the superintendent in ARM 10.57.201A.

COMMENT 39: One commenter stated we need to focus on background checks and drug testing of educators and that substitute teachers should go through the same types of testing.

RESPONSE: The Board of Public Education thanked the commenter for their input and stated that school districts have discretion to adopt local policy requiring criminal background checks and drug testing staff and employees.

COMMENT 40: The Board Licensure Committee commented that the language in ARM 10.57.215(1)(a) is an incomplete sentence and recommended the following language: (a) Applicants for an initial Montana Class 1, 2, 3 and 6 license whose degree is more than five years old and who do not have a current out-of-state license may be issued a license with verification of 60 professional development units earned within the five-year period preceding the effective date of the license.

COMMENT 41: Sixteen commenters, including CSPAC, NWMASS, Lindsay School Board, and MTPEC, agreed with the changes as proposed in ARM 10.57.215.

RESPONSE to COMMENTS 40-41: The Board of Public Education agreed generally with the commenters in Comments 40 and 41 and thanked the Board Licensure Committee for proposing clean up language. The board has incorporated the changes in ARM 10.57.215.

COMMENT 42: Sixteen commenters, including CSPAC, NWMASS, Lindsay School Board, and MTPEC, agreed with the changes as proposed in ARM 10.57.216.

COMMENT 43: Sixteen commenters, including CSPAC, NWMASS, Lindsay School Board, and MTPEC, agreed with the changes as proposed in ARM 10.57.217.

COMMENT 44: Sixteen commenters, including CSPAC, NWMASS, Lindsay School Board, and MTPEC, agreed with the changes as proposed in ARM 10.57.218.

RESPONSE to COMMENTS 42-44: The Board of Public Education agreed with the commenters in Comments 42-44 and accepted the rules as proposed by the superintendent in ARM 10.57.216, 10.57.217, and 10.57.218.

COMMENT 45: Seventeen commenters, including the UM Professional Education Unit Faculty, are concerned with the proposed changes for adding an endorsement in ARM 10.57.301, stating that an educator cannot have the qualifications, experience, and background knowledge in specialized fields by completing two years of teaching and passing the Praxis.

RESPONSE: The Board of Public Education disagreed with the commenters and believes the addition of ARM 10.57.301(3)(c) allows for more flexibility for local school districts to find licensed educators to teach under multiple endorsement areas. The board has retained the superintendent's proposed recommendation.

COMMENT 46: Fourteen commenters, including CSPAC, NWMASS, and MTPEC, supported the changes from grade to age in ARM 10.57.301.

RESPONSE: The Board of Public Education disagreed with these comments in ARM 10.57.301, as this is inconsistent with language in other board rules.

COMMENT 47: The Governor's Office disagreed with the suggestion in ARM 10.57.301 and stated licensure definitions are commonly described by grade levels.

RESPONSE: The Board of Public Education agreed with the Governor's Office and has retained the superintendent's recommendation in ARM 10.57.301.

COMMENT 48: Six commenters, including the Governor's Office, Republican legislators, and Lindsay School Board, supported the current changes in ARM 10.57.301, making it easier to add an endorsement, based on the ability to take the Praxis exam, rather than attend an educator preparation program.

COMMENT 49: CSPAC recommended the board accept the superintendent's proposed changes to ARM 10.57.301(3)(a) and (b).

RESPONSE to COMMENTS 48-49: The Board of Public Education agreed with Comments 48 and 49 and believe that the additional flexibilities proposed in ARM

10.57.301 are good for public education in Montana. The board has retained the superintendent's recommendations in ARM 10.57.301.

COMMENT 50: The Board Licensure Committee commented that the language in ARM 10.57.301(3)(a) refers to "endorsement program" completion, a term that is not used elsewhere in ARM. They proposed the following language to reflect the same language used in (2): (3)(a) completion of a program of study as verified by the appropriate official, defined in ARM 10.57.102.

RESPONSE: The Board of Public Education agreed with the Board Licensure Committee and thanked them for proposing clean up language in ARM 10.57.301(3)(a). The board has incorporated these changes in rule.

COMMENT 51: One commenter stated they are unable to obtain a specific endorsement, as they have a different endorsement from another state. (Health and Physical Education vs. Health Enhancement)

COMMENT 52: One commenter supported the BPE Internship Program to assist teachers in adding endorsements.

RESPONSE to COMMENTS 51-52: The Board of Public Education acknowledged Comments 51 and 52 and believe that the approved changes will provide for more flexibility that could ultimately assist out-of-state educators in getting their license in Montana.

COMMENT 53: Fourteen commenters, including NWMASS and MTPEC, supported adding the following language in ARM 10.57.410(3)(e) "verified completion of an educator preparation program, a current standard, unrestricted out-of-state educator license, and two years of successful teaching experience as defined in ARM 10.57.102 as documented by a recommendation from the out-of-state accredited P-12 school employer on a form prescribed by the superintendent of public instruction."

COMMENT 54: Thirteen commenters, including NWMASS and MTPEC, commented that by requiring a Praxis score that meets Montana cut scores is duplicative and unnecessary, as any recent licensed education graduate from another state with a standard license and two or more years of experience already has a pre-licensure assessment score. MTPEC recommended the following language under ARM 10.57.410(3)(e)(iv) "verified completion of an educator preparation program, a current standard, unrestricted out-of-state educator license, and two years of successful teaching experience as defined in ARM 10.57.102 as documented by a recommendation from the out-of-state state accredited P-12 school employer on a form prescribed by the superintendent of public instruction."

COMMENT 55: Twelve commenters, including NEMASS, supported the recognition of teaching licenses from other states.

COMMENT 56: Nine commenters, including the Governor's Office, Republican legislators, NEMASS, and Lindsay School Board, supported the revisions in ARM 10.57.410 that allow for multiple pathways to licensure to show competency beyond the Praxis exam.

RESPONSE to COMMENTS 53-56: The Board of Public Education agreed with Comments 53-56 and have incorporated the recommendation to add an additional pathway to licensure for out-of-state educators in ARM 10.57.410(3)(e)(iv).

COMMENT 57: Seven commenters opposed the revisions in ARM 10.57.410 that allow for multiple pathways to licensure and stated the Praxis does not indicate one's teaching ability, rather one should have to demonstrate competency through teaching experience.

RESPONSE: The Board of Public Education disagreed with these commenters in ARM 10.57.410 and stated the additional flexibilities will support recruitment and retention of educators.

COMMENT 58: Three commenters supported lifetime licenses and stated it is difficult to work another job in the private sector and still be able to get enough renewal units for licensure. Additionally, they stated that lifetime licenses may keep them in the profession to assist in substitute teaching or emergency authorizations.

COMMENT 59: Two commenters are concerned about lifetime licenses and stated that educators should continue to receive professional development and renewal process, as it relates to checks and balances.

RESPONSE to COMMENTS 58-59: The Board of Public Education acknowledged Comments 58 and 59 and commented that lifetime licenses will be recognized, and licensees will receive the appropriate license in Montana, based on their experience and education that meets the provisions under ARM 10.57.410. Professional development is still required for all classes of licensure.

COMMENT 60: One commenter and the Board Licensure Committee supported retaining the requirement for successful teaching experience in ARM 10.57.410.

RESPONSE: The Board of Public Education determined that successful teaching experience is no longer required for licensure, except for the new section that requires proof of two years' successful teaching experience if out-of-state educators cannot meet the requirements in ARM 10.57.410(3)(e)(i), (ii), and (iii).

COMMENT 61: The Governor's Office supported removing the required years of experience in ARM 10.57.410 for out-of-state educators and adding professional development opportunities to university coursework for recency requirements.

RESPONSE: The Board of Public Education agreed with the Governor's Office and has retained the superintendent's recommendations in ARM 10.57.410.

COMMENT 62: One commenter opposed changing the required years of experience from five years to none in ARM 10.57.410. Additionally, they do not believe the TEACH program is an incentive for new teachers, as it does not address the problem of low pay, long hours, affordable housing, and local or community support.

RESPONSE: The Board of Public Education determined that successful teaching experience is no longer required for licensure, except for the new section that requires proof of two years' successful teaching experience if out-of-state educators cannot meet the requirements in ARM 10.57.410(3)(e)(i), (ii), and (iii). The TEACH Act is not under the supervision of the Board of Public Education; rather it is part of the Governor's budget and is intended to increase starting teacher pay.

COMMENT 63: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.411.

COMMENT 64: Three commenters supported license reciprocity for National Board Certified Teachers.

COMMENT 65: The Governor's Office supported removing the required years of experience for out-of-state educators in ARM 10.57.411 and adding professional development opportunities to university coursework for recency requirements.

RESPONSE to COMMENTS 63-65: The Board of Public Education agreed with Comments 63-65 and have retained the superintendent's recommendations in ARM 10.57.411.

COMMENT 66: Two commenters supported lifetime licenses for National Board Certified Teachers.

RESPONSE: The Board of Public Education commented that lifetime licenses will be recognized, and licensees will receive the appropriate license in Montana, based on their experience and education that meets the provisions under ARM 10.57.411.

COMMENT 67: Fourteen commenters, including CSPAC, NWMASS, and MTPEC, supported the changes from grade to age in ARM 10.57.412.

RESPONSE: The Board of Public Education disagreed with these commenters in ARM 10.57.412, as this is inconsistent with language in other board rules.

COMMENT 68: The Governor's Office disagreed with the suggestion in ARM 10.57.412, as licensure definitions are commonly described by grade levels.

RESPONSE: The Board of Public Education agreed with the Governor's Office and have retained the superintendent's recommendations in ARM 10.57.412.

COMMENT 69: Fourteen commenters, including NWMASS and MTPEC, supported adding the following language in ARM 10.57.412: "completion of an educator preparation program, a current standard, unrestricted out-of-state educator license, and two years of successful teaching experience as defined in ARM 10.57.102 documented by a recommendation from a state accredited P-12 school employer on a form prescribed by the superintendent of public instruction."

COMMENT 70: Thirteen commenters, including NWMASS and MTPEC, commented that requiring a Praxis score that meets Montana cut scores is duplicative and unnecessary, as any recent licensed education graduate from another state with a standard license and two or more years of experience already has a pre-licensure assessment score. MTPEC recommended the following language under ARM 10.57.412(6): "completion of an educator preparation program, a current standard, unrestricted out-of-state educator license, and two years of successful teaching experience as defined in ARM 10.57.102 documented by a recommendation from a state accredited P-12 school employer on a form prescribed by the superintendent of public instruction."

COMMENT 71: One commenter and the Board Licensure Committee supported retaining the requirement for successful teaching experience in ARM 10.57.412.

RESPONSE to COMMENTS 69-71: The Board of Public Education conceptually agreed with Comments 69-71 and does not plan to repeat the language in this section, as it is already included under ARM 10.57.410, which they believe is sufficient.

COMMENT 72: One commenter stated that years of experience should be required in ARM 10.57.412 for those coming from out-of-state alternative preparation programs.

RESPONSE: The Board of Public Education stated that required experience is already included in ARM 10.57.410 for out-of-state educators who cannot meet the requirements under ARM 10.57.410(3)(e)(i), (ii), and (iii).

COMMENT 73: Thirteen commenters, including NWMASS and MTPEC, supported additional language in ARM 10.57.413 that reads "an applicant for a Class 3 Administrative License who completed an educator preparation program, which does not meet the definition in ARM 10.57.102, who is currently licensed in another state at the same level of licensure, may be considered for licensure with verification of two years of successful administrative experience as defined in ARM 10.57.102 as documented by a recommendation from a state accredited P-12 school employer on a form prescribed by the superintendent of public instruction and approved by the Board of Public Education."

COMMENT 74: The Board Licensure Committee supported retaining the requirement for successful administrative experience in ARM 10.57.413.

RESPONSE to COMMENTS 73-74: The Board of Public Education conceptually agreed with Comments 73 and 74 and does not plan to repeat the language in ARM 10.57.413, as it is already included under specific endorsement areas, which they believe is sufficient.

COMMENT 75: Three commenters, including CSPAC and the Governor's Office, supported the counselor to administrator pathway throughout ARM.

RESPONSE: The Board of Public Education agreed with the commenters and recognized through their work with unusual cases that this is an area of need for increased flexibility. The board has retained the superintendent's recommendations in ARM 10.57.413.

COMMENT 76: The Governor's Office supported removing the required years of experience for out-of-state educators in ARM 10.57.413 and adding professional development opportunities to university coursework for recency requirements.

RESPONSE: The Board of Public Education agreed with the Governor's Office and have retained the superintendent's recommendations in ARM 10.57.413.

COMMENT 77: One commenter supported a pathway for school psychologists in ARM 10.57.413 to be licensed as principals, like the proposed revisions allow for school counselors.

RESPONSE: The Board of Public Education disagreed with the commenter and stated that this is not an issue that has been previously brought before the board and that they would like more information before moving forward. The topic of a pathway to administrative licensure for school counselors has been brought before the board on a number of occasions as unusual cases and discussions with education partners.

COMMENT 78: Fifteen commenters, including NWMASS and MTPEC, suggested changes to ARM 10.57.414(1)(c) that read "(c) completion of courses covering Montana School Finance, Montana School Law and Montana Collective Bargaining and Employment Law, in order to qualify, such courses must have been provided either by: (i) an approved professional development provider pursuant to ARM 10.57.216 that has provided approved courses for at least five consecutive years in the required areas for which a candidate submits evidence to qualify for licensure; or (ii) an approved school administrator preparation program."

COMMENT 79: The Governor's Office and Republican legislators supported adding the option in ARM 10.57.414 for professional development in addition to traditional university coursework in Montana school law, finance, and collective bargaining.

RESPONSE to COMMENTS 78-79: The Board of Public Education generally agreed with Comments 78 and 79, with the exception to Comment 78 that required the professional development provider to have provided approved courses for at least

five consecutive years. The board has incorporated these changes in ARM 10.57.414.

COMMENT 80: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.415.

RESPONSE: The Board of Public Education agreed with the commenters and have retained the superintendent's recommendations in ARM 10.57.415.

COMMENT 81: One commenter opposed the proposed rules that remove Montana before school law in ARM 10.57.415.

RESPONSE: The Board of Public Education disagreed with this commenter and stated that Montana-specific school law, which is required under ARM 10.57.414, is more appropriate for school superintendents.

COMMENT 82: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.418.

COMMENT 83: The Board Licensure Committee suggested the deletion of the word "requirements" in ARM 10.57.418(1)(c). The concept is that the applicant must provide verification of eligibility for a Class 1 or Class 2 teaching license endorsed in the field of specialization or Class 6 school counseling license.

RESPONSE to COMMENTS 82-83: The Board of Public Education generally agreed with Comments 82 and 83 and thanked the Board Licensure Committee for providing clean up language. The board has incorporated the changes from Comment 83 into ARM 10.57.418.

COMMENT 84: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.419.

COMMENT 85: The Board Licensure Committee recommended retaining the words "school setting" in ARM 10.57.419(1)(c). According to OPI, the intent was to delete the word "accredited," not "school setting." They have suggested the following language: (1)(c) three years of teaching experience in a P-12 school setting.

RESPONSE to COMMENTS 84-85: The Board of Public Education generally agreed with Comments 84 and 85 and thanked the Board Licensure Committee for providing clean up language. The board has incorporated the changes from Comment 85 in ARM 10.57.419.

COMMENT 86: One commenter opposed removing state-accredited in ARM 10.57.419, as it opens the door to where one receives experience from.

RESPONSE: The Board of Public Education noted that by adding in "P-12 school-setting," as agreed upon in Comment 85, the required experience will be reinstated in ARM 10.57.419(1)(c).

COMMENT 87: Fifteen commenters, including the Governor's Office, NWMASS, and MTPEC, agreed with the changes as proposed in ARM 10.57.420.

COMMENT 88: CSPAC recommended support of the changes from 10,000 to 5,000 hours of experience in ARM 10.57.420, and the reduction of professional development hours from 80 to 60.

RESPONSE to COMMENTS 87-88: The Board of Public Education agreed with Comments 87 and 88 and thanked them for their support. The board has retained the recommendations from the superintendent in ARM 10.57.420.

COMMENT 89: The Board Licensure Committee commented that edits are needed in ARM 10.57.420(2)(b) acknowledge completion of education. They have suggested the following language: A Class 4B license issued to individuals with a certificate of completion from an apprenticeship program, or an associate or bachelor's degree from a regionally accredited college or university.

COMMENT 90: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.420.

RESPONSE to Comments 89-90: The Board of Public Education generally agreed with Comments 89 and 90 and thanked the Board Licensure Committee for including additional language. The board has incorporated the changes from Comment 89 in ARM 10.57.420.

COMMENT 91: One commenter supported creating a group of cybersecurity experts to address the omission of a cybersecurity endorsement in ARM 10.57.421.

RESPONSE: The Board of Public Education noted that this endorsement would likely be allowable under Class 4 licensure. The board stated that they need more information before including the specific endorsement under ARM 10.57.421.

COMMENT 92: The Board Licensure Committee and CSPAC commented that the last two sentences under ARM 10.57.424(3) should be moved to the beginning of the rule as new (2), as the sentences are relevant to all Class 5 licenses, not just Class 5B.

RESPONSE: The Board of Public Education agreed with the Board Licensure Committee and thanked them for providing clean up language. The board has incorporated these changes under ARM 10.57.424.

COMMENT 93: Five commenters, including the Governor's Office, Lindsay School Board, and NWMASS, agreed with the changes as proposed in ARM 10.57.424.

COMMENT 94: The Board Licensure Committee commented that the term "state-funded school" in ARM 10.57.424(5)(b) traditionally refers to MSDB, Pine Hills, and Riverside. They believe the current language is confusing and proposed the following language: ARM 10.57.424(5)(b) a current Montana address or job offer from an accredited P-12 school in Montana.

RESPONSE to COMMENTS 93-94: The Board of Public Education generally agreed with Comments 93 and 94 and thanked the Board Licensure Committee for bringing proposed language to clear up any confusion on state-funded schools. The board has incorporated the changes in ARM 10.57.424.

COMMENT 95: Fourteen commenters, including CSPAC, NWMASS, and MTPEC, supported the changes from grade to age in ARM 10.57.425.

RESPONSE: The Board of Public Education disagreed with the commenters in reference to ARM 10.57.425, as this is inconsistent with language in other board rules.

COMMENT 96: The Governor's Office disagreed with the suggestion in ARM 10.57.425 and stated that licensure definitions are commonly described by grade levels.

RESPONSE: The Board of Public Education agreed with the Governor's Office and retained the superintendent's recommendation in ARM 10.57.425.

COMMENT 97: Thirteen commenters, including NWMASS and MTPEC, suggested the inclusion of the following language to ARM 10.57.427(1)(b) "...and two years of successful supervisory experience as a licensed administrator as defined in ARM 10.57.102, documented by a recommendation from a state accredited P-12 school employer on a form prescribed by the superintendent of public instruction."

COMMENT 98: The Board Licensure Committee supported retaining the requirement for successful supervisory experience in ARM 10.57.427.

COMMENT 99: Thirteen commenters, including NWMASS and MTPEC, suggested the inclusion of the following language to ARM 10.57.428(1)(b) "...and two years of successful supervisory experience as a licensed administrator as defined in ARM 10.57.102 as documented by a recommendation from a state accredited P-12 school employer on a form prescribed by the superintendent of public instruction."

COMMENT 100: The Board Licensure Committee supported retaining the requirement for successful supervisory experience in ARM 10.57.428.

RESPONSE to COMMENTS 97-100: The Board of Public Education conceptually agreed with Comments 97-100 and does not plan to repeat the language in ARM

10.57.427 and 10.57.428, as it is already included under the specific endorsement areas.

COMMENT 101: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.431.

COMMENT 102: The Board Licensure Committee supported adding "P-12" to the "school setting" language in ARM 10.57.431(1)(b) to be consistent with the rest of rule.

RESPONSE to COMMENTS 101-102: The Board of Public Education agreed with Comments 101 and 102 and thanked the Board Licensure Committee for providing clean up language. The board has incorporated these changes in ARM 10.57.431.

COMMENT 103: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.432.

RESPONSE: The Board of Public Education agreed with this comment and retained the superintendent's recommendations in ARM 10.57.432.

COMMENT 104: Fourteen commenters, including NWMASS, Lindsay School Board, and MTPEC, agreed with the changes as proposed in ARM 10.57.433.

RESPONSE: The Board of Public Education agreed with this comment and retained the superintendent's recommendations in ARM 10.57.433.

COMMENT 105: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.434.

COMMENT 106: The Board Licensure Committee supported adding "P-12" to the "school setting" language in ARM 10.57.434(1)(b) and (c)(ii) to be consistent with the rest of the rule.

COMMENT 107: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.435.

COMMENT 108: The Board Licensure Committee supported adding "P-12" to the "school setting" language in ARM 10.57.435(1)(b) and (c)(ii) to be consistent with the rest of the rule.

RESPONSE to COMMENTS 105-108: The Board of Public Education agreed with Comments 105-108 and thanked the Board Licensure Committee for providing clean up language. The board has incorporated these changes in ARM 10.57.434 and 10.57.435.

COMMENT 109: Fourteen commenters, including CSPAC, NWMASS, and MTPEC, agreed with the changes as proposed in ARM 10.57.436.

RESPONSE: The Board of Public Education disagreed with the commenters and approved recommendations provided by MACIE in Comment 110.

COMMENT 110: MACIE recommended the Class 7 License to only require a tribal delegate signature on the initial application in ARM 10.57.436. They suggested the board retain the five-year renewal process and allow for all professional development opportunities, including those required by the tribe as described in the MOU, to be acceptable under the renewal process.

RESPONSE: The Board of Public Education agreed with MACIE and thanked them for their involvement in the process. The board has incorporated these changes in ARM 10.57.436

COMMENT 111: Fifteen commenters, including CSPAC, the Governor's Office, NWMASS, and MTPEC, agreed with the changes as proposed in ARM 10.57.437.

RESPONSE: The Board of Public Education agreed with the commenters and retained the superintendent's recommendations in ARM 10.57.437.

COMMENT 112: The Board Licensure Committee commented that revisions needed to be made in ARM 10.57.437(3)(c) include (i), given the deletion of language in (ii). They have suggested the following language: (3)(c) recommendation from the Chief Academic Officer from a regionally accredited college or university verifying the applicant plans to teach.

RESPONSE: The Board of Public Education agreed with the Board Licensure Committee and thanked them for providing clean up language. The board has incorporated these changes in ARM 10.57.437.

COMMENT 113: The Governor's Office encouraged the board to consider striking ARM 10.57.437(4), as they believe CSPAC should not be reviewing Class 8 applications.

RESPONSE: The Board of Public Education disagreed with the Governor's Office, as CSPAC is tasked in ARM 10.57.437 with making recommendations on the issuance of Class 8 licenses.

COMMENT 114: Two commenters agreed with the task force recommendation in ARM 10.57.601 to strike "or from any other credible source" or if the board would like to keep the language, then a definition should be provided for "credible source."

RESPONSE: The Board of Public Education disagreed with this comment and stated that this language needs to remain in rule and that a definition could possibly harm the flexibility regarding who could be considered a credible source.

COMMENT 115: The Governor's Office agreed with the superintendent in ARM 10.57.601 to keep the current rule as written to ensure members of the public are able to file a complaint about official misconduct.

RESPONSE: The Board of Public Education agreed with the Governor's Office and the current language in ARM 10.57.601 remains in rule.

COMMENT 116: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.601A.

RESPONSE: The Board of Public Education agreed with the commenters and retained the superintendent's recommendations in ARM 10.57.601A.

COMMENT 117: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.601B.

RESPONSE: The Board of Public Education agreed with the commenters and retained the superintendent's recommendations in ARM 10.57.601B.

COMMENT 118: Thirteen commenters, including NWMASS and MTPEC, agreed with the changes as proposed in ARM 10.57.607.

RESPONSE: The Board of Public Education agreed with the commenters and retained the superintendent's recommendations in ARM 10.57.607.

COMMENT 119: Thirty commenters, including MCDE, stated that Montana could retain our educators by incentivizing better pay, affordable housing, and more affordable health insurance coverage. Additionally, they stated that educators need to feel supported, respected, and appreciated for the professionals they are.

RESPONSE: The Board of Public Education recognizes that there are many factors related to the recruitment and retention issues facing the state, and that educator licensure is one small piece. The board has long respected and appreciated the work of public educators in Montana.

COMMENT 120: Seventeen commenters stated if standards are lowered, our state is doing a disservice to our youth.

RESPONSE: The Board of Public Education acknowledged the concern and will continue to support high-quality education in Montana.

COMMENT 121: Thirteen commenters, including NWMASS and MTPEC, agreed with the repeal of the following rules: ARM 10.57.416, 10.57.417, 10.57.426, 10.57.429, and 10.57.430.

RESPONSE: The Board of Public Education agreed with the commenters.

COMMENT 122: Five commenters, including CSPAC and the Governor's Office, supported the Indian Education for All requirements throughout the proposed revisions.

RESPONSE: The Board of Public Education agreed with the commenters and retained the superintendent's proposed revisions to incorporate Indian Education for All requirements throughout rule.

COMMENT 123: Two commenters, including the Governor's Office, supported the changes to Chapter 57 to help school districts recruit and retain qualified educators.

RESPONSE: The Board of Public Education agreed with the commenters and will continue to support the recruitment and retention of qualified educators in Montana and believes the changes in rule will provide more flexibility.

COMMENT 124: Three commenters, including MCDE, stated there is no evidence that relaxing or streamlining certification standards will attract more teachers to fill open positions and fix the teacher shortage. They have asked the board to show the data that proves that teacher candidates are waiting to come to Montana to take advantage of the lowered standards. Additionally, they have suggested the board decrease class sizes, provide more preparatory time, and investigate how to make the career of teaching more attractive to our younger generation.

COMMENT 125: The MCDE asked the board to consider the following suggestions: address the number of seniors pursuing post-secondary education, invite students to see themselves as educators by creating pathways, work with the Board of Regents to allow EPPs to offer endorsements in any area in which their resources permit, support students with scholarships who agree to teach in rural areas for a certain period of time, scale "grow your own" models, and ensure housing exists.

RESPONSE to COMMENTS 124-125: The Board of Public Education acknowledged Comments 124 and 125 and agreed that these are very important topics in public education and stated they needed more information before making any changes in rule.

COMMENT 126: One commenter asked the board to consider how these policy adjustments will impact current teachers and argued that the current changes will not benefit those who are currently in our Montana classrooms. They are concerned about licensing being under the direction of the superintendent and the Office of Public Instruction.

RESPONSE: The Board of Public Education responded that there are many revisions that could positively impact current classroom teachers such as the opportunity to add endorsements without seeking a traditional educator preparation program, pathways for school counselors to become administrators, and automatic reciprocity for National Board Certified Teachers. The Educator Licensure Unit has always been at the Office of Public Instruction.

COMMENT 127: NEMASS commented that they support local control and returning the authority for classroom teachers to a simpler process.

RESPONSE: The Board of Public Education has always respected local control and will continue to support their work at the local school district level.

COMMENT 128: One commenter urged people to keep politics out of schools and stated that it is not always about the money—a few thousand dollars will not fix the lack of support from government for public education.

RESPONSE: The Board of Public Education recognizes that there are many factors related to the recruitment and retention issues facing the state, and that educator licensure is one small piece. The Board of Public Education does not determine, issue, or have authority over K-12 school funding.

COMMENT 129: One commenter asked the board why the Montana Lottery profits were changed in 1990 from going to the teacher's retirement system to the school equalization account at the Office of Public Instruction. Additionally, they are curious why school boards allow teachers to live outside the district they work in.

RESPONSE: The Board of Public Education responded that these questions are outside the purview of the board, and that the allocation of lottery revenues is the responsibility of the Legislature and residency requirements for teachers is the responsibility of local school boards of trustees.

COMMENT 130: One commenter stated that we should look at teacher training as an apprenticeship program, especially for elementary teachers, and we would be able to recruit more teacher's aids, support staff, and volunteers with on-the-job training.

COMMENT 131: One commenter stated we should focus more on training programs to support teacher education training, especially for para educators. Additionally, they would like the board to incentivize senior citizens to give back to their communities through property tax breaks.

RESPONSE to COMMENTS 130-131: The Board of Public Education acknowledges Comments 130 and 131 and thanks the commenters for their interest in workforce development as it relates to educator preparation. The board does not have authority over property tax incentives.

COMMENT 132: One commenter stated that the reforms that have been proposed, and those in the past, have the underlying goal of undermining public schools to promote future privatization.

RESPONSE: The Board of Public Education stated that they take their responsibility of general supervision over the K-12 public school system very seriously and are not advocates for privatization of public schools.

COMMENT 133: One commenter stated that the board needs to make it easier on teachers that have J1 Visas. They would also like to see people in the licensure department that can answer licensure questions.

RESPONSE: The Board of Public Education recognizes that there are many factors related to the recruitment and retention issues facing the state and thanked the commenter for their concerns. The board acknowledged the Educator Licensure Unit at the Office of Public Instruction is tasked with responding to licensure questions.

COMMENT 134: One commenter stated she has worked with good and bad teachers, and the teachers they perceived as bad were pertaining to their sexual identity.

RESPONSE: The Board of Public Education acknowledges the comment.

COMMENT 135: One commenter supported the recruitment of teachers from within communities by supporting dual-credit teacher education coursework, 2+2 programs, and online/distance coursework. Additionally, they recommended the facilitation of cohort or "cluster hire" partnerships to assist staffing and provide an expanded social and professional network for new teachers.

RESPONSE: The Board of Public Education agreed that these are very important topics in public education and determined they needed more information before making any changes in rule.

/s/ McCall Flynn
McCall Flynn
Rule Reviewer

/s/ Tammy Lacey
Tammy Lacey
Chair
Board of Public Education

Certified to the Secretary of State May 17, 2022.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to state diplomas) NOTICE OF ADOPTION
)

TO: All Concerned Persons

1. On April 15, 2022, the Superintendent of Public Instruction published MAR Notice No. 10-66-102 pertaining to the proposed adoption of the above-stated rule at page 451 of the 2022 Montana Administrative Register, Issue Number 7.

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

NEW RULE I (10.66.301) STATE DIPLOMAS (1) through (1)(b) remain as proposed.

(i) completes a high school equivalency ~~diploma exam~~ under ARM Title 10, chapter ~~6 66~~, subchapter 1 with a score at least 20% above the minimum passing score;

(ii) through (3) remain as proposed.

AUTH: 20-3-110, MCA

IMP: 20-3-110, MCA

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

COMMENT #1: One commenter urged use of the phrase "Montana Proficiency-Based Diploma" to reflect the language of 20-3-110, MCA, rather than "state diploma" as used in proposed New Rule I.

RESPONSE #1: The superintendent appreciates the public comment. The phrase "state diploma" was chosen to simplify the reference to diplomas issued pursuant to 20-3-110, MCA, and to acknowledge that the state superintendent, not a local school district, is responsible for establishing the process, eligibility, and qualifications for issuance of the diploma.

COMMENT #2: One commenter identified two typographical errors in proposed New Rule I(1)(b)(i), one in the chapter number reference and one in the phrase "high school equivalency diploma" that should instead be "high school equivalency exam."

RESPONSE #2: The superintendent appreciates the public comment, agrees with the comment, and has made the changes in the adoption of the final rule.

COMMENT #3: Two commenters urged the removal of the mentorship requirement in proposed New Rule I(1)(b)(ii). The commenters asserted that the provision exceeded the requirements of 20-3-110, MCA. One commenter also stated that the requirement would unnecessarily limit the availability of the diplomas by excluding most gifted and talented students who otherwise might meet the criteria. The other commenter also stated that the requirement was not clearly defined.

RESPONSE #3: The superintendent appreciates the public comment. The mentorship requirement aligns with the provision in 20-3-110(1)(b), MCA, requiring a demonstration of "the application of knowledge to real-world situations." The commenters did not propose an alternative means for meeting the statutory requirement. The mentorship requirement was designed to be flexible to encourage innovation in how that requirement would be met.

COMMENT #4: One commenter urged the removal of the written plan requirement in proposed New Rule I(1)(b)(iii). The commenter asserted that the provision exceeded the requirements of 20-3-110, MCA, and that the requirement was not clearly defined.

RESPONSE #4: Please see Response #3.

COMMENT #5: One commenter recommended inclusion of language stating that an individual enrolled in a home school or nonpublic school is not eligible for the diploma, as stated in 20-3-110(3), MCA.

RESPONSE #5: The superintendent appreciates the public comment. The eligibility limitation referenced by the commenter already exists in statute and, thus, does not need to be repeated in the rule implementing the statute.

4. The effective date of this new rule is June 10, 2022.

/s/ Robert Stutz

Robert Stutz
Rule Reviewer

/s/ Elsie Arntzen

Elsie Arntzen
Superintendent of Public Instruction
Office of Public Instruction

Certified to the Secretary of State May 17, 2022.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 12.5.706 and the repeal of ARM	)	REPEAL
12.5.707 pertaining to the removal of)	
Tiber Reservoir from the list of)	
Identified Bodies of Water Confirmed)	
or Suspected for Aquatic Invasive)	
Mussels)	

TO: All Concerned Persons

1. On February 25, 2022, the Department of Fish, Wildlife and Parks published MAR Notice No. 12-557 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 271 of the 2022 Montana Administrative Register, Issue Number 4.

2. The department has amended ARM 12.5.706 as proposed.

3. The department has repealed ARM 12.5.707 as proposed.

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

COMMENT 1: The department received one comment in support of amending ARM 12.5.706 and repealing ARM 12.5.707.

RESPONSE 1: The department appreciates the public's participation in this rulemaking process.

COMMENT 2: The department received one comment concerning the amendments to ARM 12.5.706, stating the amendments leave no avenue to address treatment and removal should an invasive mussel species be found in the state water bodies.

RESPONSE 2: The language being amended out of ARM 12.5.706 states, "the known existence of aquatic invasive mussels in the areas defined in ARM 12.5.707," referring to the identified bodies of water confirmed or suspected for aquatic invasive mussels. The reference is no longer necessary. ARM 12.5.707 is being repealed due to the removal from the list of Canyon Ferry Reservoir in 2020 and the current removal of Tiber Reservoir. Treatment and removal of invasive species will continue to be addressed through the quarantine measures outlined in ARM 12.5.706(2) and (3).

/s/ Kevin Rechhoff
Kevin Rechhoff
Rule Reviewer

/s/ Hank Worsch
Hank Worsch
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State May 17, 2022.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the transfer of ARM) NOTICE OF TRANSFER
Title 2, chapter 13, subchapters 2, 3,)
and 4 pertaining to the 9-1-1)
Telecommunications System)

TO: All Concerned Persons

1. The Department of Administration transfers the above-stated rules to the Department of Justice, ARM Title 23, chapter 8, subchapters 1, 2, and 3.

2. This transfer is required because the 2021 Legislature transferred the administrative function and responsibilities of the program from the Department of Administration to the Department of Justice in House Bill 693, Ch. 566, L. 2021.

3. The transferred rules are assigned the following numbers under the Department of Justice:

<u>OLD</u>	<u>NEW</u>	
2.13.210	23.8.101	NEXT GENERATION 9-1-1 TECHNOLOGY STANDARDS AND BASELINE PRINCIPLES
2.13.301	23.8.201	DEFINITIONS
2.13.304	23.8.202	PSAP CERTIFICATION
2.13.305	23.8.203	APPLICATION FOR CERTIFICATION
2.13.306	23.8.204	CERTIFICATION PROCESS
2.13.310	23.8.205	DECERTIFICATION AND FUNDING REDUCTION
2.13.313	23.8.206	ALLOCATION OF FUNDS
2.13.314	23.8.207	ALLOWABLE USES OF FUNDS
2.13.320	23.8.208	REPORTING, MONITORING, AND RECORDKEEPING
2.13.401	23.8.301	GRANT PROGRAM DEFINITIONS
2.13.404	23.8.302	ELIGIBILITY REQUIREMENTS FOR GRANTS
2.13.405	23.8.303	APPLICATION FOR GRANTS
2.13.407	23.8.304	APPLICANT PRIORITY AND CRITERIA FOR AWARDED GRANTS
2.13.410	23.8.305	GRANT REPORTING, MONITORING, AND RECORDKEEPING
2.13.411	23.8.306	PROCEDURES FOR REPAYMENT OF GRANT FUNDS

4. The transfer of the above-described rules shall be effective May 28, 2022.

/s/ Derek Oestreicher
Derek Oestreicher
Rule Reviewer

/s/ David M.S. Dewhirst
David M.S. Dewhirst
Solicitor General
Montana Department of Justice

Certified to the Secretary of State May 17, 2022.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.129.603 minimum licensure)
standards)

TO: All Concerned Persons

1. On March 11, 2022, the Board of Clinical Laboratory Science Practitioners (board) published MAR Notice No. 24-129-19 regarding the public hearing on the proposed amendment of the above-stated rule, at page 322 of the 2022 Montana Administrative Register, Issue No. 5.

2. On April 1, 2022, a public hearing was held on the proposed amendment of the above-stated rule via the videoconference and telephonic platform. No comments were received by the April 8, 2022 deadline.

3. The board has amended ARM 24.129.603 exactly as proposed.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
MATTHEW KALANICK, CLSP
BOARD CHAIR

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

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 17, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.31.1101 pertaining to)
department processing and)
remittance of local-option marijuana)
excise tax collections to localities)

TO: All Concerned Persons

1. On April 15, 2022, the Department of Revenue published MAR Notice No. 42-1049 pertaining to public hearing on the proposed amendment of the above-stated rule at page 497 of the 2022 Montana Administrative Register, Issue Number 7.
2. On May 9, 2022, the department held a public hearing to consider the proposed amendment. There were no commenters present to provide testimony or commentary for the rulemaking. The department did not receive any written comments in support of or opposition to the proposed amendments.
3. The department has amended the above-stated rule as proposed.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State May 17, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 42.4.1202 and 42.26.101 and	)	REPEAL
the repeal of ARM 42.4.121, 42.4.201)	
through 42.4.209, 42.4.1702,)	
42.4.2801 through 42.4.2803)	
pertaining to eliminated tax credits)	

TO: All Concerned Persons

1. On April 15, 2022, the Department of Revenue published MAR Notice No. 42-1050 pertaining to the proposed amendment and repeal of the above-stated rules at page 500 of the 2022 Montana Administrative Register, Issue Number 7.

2. On May 9, 2022, the department held a public hearing to consider the proposed amendment and repeal. There were no commenters present to provide testimony or commentary for the rulemaking. The department did not receive any written comments in support of or opposition to the proposed amendments and repeals.

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State May 17, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I pertaining to licensed premises)
proximity requirements to places of)
worship or schools)

TO: All Concerned Persons

1. On April 15, 2022, the Department of Revenue published MAR Notice No. 42-1051 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 504 of the 2022 Montana Administrative Register, Issue Number 7.

2. On May 9, 2022, the department held a public hearing to consider the proposed adoption. There were no commenters present to provide testimony or commentary for the rulemaking. The department did not receive any written comments in support of or opposition to the proposed adoption.

3. The department has adopted New Rule I (42.39.124) as proposed.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State May 17, 2022.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.3.106, 44.3.110, 44.3.115,)
44.3.116, and 44.3.2702 pertaining to)
procedures facilitating disabled voter)
access)

TO: All Concerned Persons

1. On April 15, 2022, the Secretary of State published MAR Notice No. 44-2-256 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 514 of the 2022 Montana Administrative Register, Issue Number 7.

2. On May 6, 2022, a public hearing was held on the proposed amendment of the above-stated rules.

3. No comments or testimony were received.

4. The Secretary of State has amended ARM 44.3.106, 44.3.110, 44.3.115, 44.3.116, and 44.3.2702 as proposed.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ ANGELA NUNN
Angela Nunn
Chief Deputy Secretary of State

Dated this 17th day of May, 2022.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is 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 March 31, 2022. This table includes notices in which those rules adopted during the period December 10, 2021, through May 13, 2022, 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 March 31, 2022, 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 2021 or 2022 Montana Administrative Registers.

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

ADMINISTRATION, Department of, Title 2

2-2-624	Public Meetings, p. 640
2-12-623	Review and Approval Process for Procurement, Development, and Oversight of Information Technology Resources and Software and Management Systems - Granting Exceptions - Utilization of Centralized State Facilities - Introduction - Definitions - Agency Information Technology Plans - Establishing Policies, Standards, Procedures, and Guidelines - Appeal Process as It Applies to Information Technology Plans, Procurements, and Granting Exceptions, p. 430
2-59-612	Standardized Forms and Procedures of the NMLS for Consumer Loan Licenses, Escrow Business Licenses, Sales Finance Company Licenses, and Deferred Deposit Lender Licenses - Consumer Loan License Surrender - Definitions for Mortgage Licensees - Revocation, Suspension, or Surrender of Mortgage Licenses - Initial Applications Through NMLS for Consumer Loan Licenses, Escrow Business Licenses, Sales Finance Company Licenses, and Deferred Deposit Lender Licenses - Consumer Loan License Amendments and Fees - Escrow Business License Amendments, Surrender, and Fees - Sales Finance Company License Amendments, Surrender, and Fees - Deferred Deposit Lender License Amendments, Surrender, and Fees - Table Funding Requiring Licensure for Mortgage Licensees, p. 1815, 228

- 2-59-615 Mutual Savings and Loan Associations - Savings and Loan Associations—Real estate - Examination and Supervisory Fees for Savings and Loan Associations, p. 1827, 230
- 2-59-616 Investment Policies - Report of Declaration and Payment of Dividend—Dividend Approval Request Form - Oaths of Directors - Parity With National Banks, p. 1872, 234

(Public Employees' Retirement Board)

- 2-43-622 Investment Policy Statements for the Defined Contribution Retirement Plan, the Montana Fixed Fund, and the 457(b) Deferred Compensation Plan, p. 267, 609

(State Lottery and Sports Wagering Commission)

- 2-63-621 Definitions - Places of Sale - Applications and Fees - Commission - Revocation or Suspension of License - Prizes, p. 1441, 1569, 40

AGRICULTURE, Department of, Title 4

- 4-22-274 State Grain Lab Fee Schedule, p. 435

STATE AUDITOR, Office of, Title 6

- 6-265 Pharmacy Benefit Manager Definitions and Network Adequacy, p. 1352, 1899
- 6-266 Rates and Premiums - Payment or Benefits, p. 1573, 43
- 6-267 Credit for Reinsurance—Reciprocal Jurisdictions - Forms, p. 444
- 6-270 Credit for Reinsurance - Certified Assuming Insurers, p. 643

COMMERCE, Department of, Title 8

- 8-2-197 Actions That Qualify as Categorical Exclusions Under the Montana Environmental Policy Act, p. 311, 610
- 8-94-191 Administration of the Montana Historic Preservation Grant (MHPG) Program, p. 1357, 1768
- 8-94-194 Deadline for the Second Cycle for the Community Development Block Grant (CDBG)—Community and Public Facilities Projects Application and Guidelines, p. 98, 398
- 8-94-196 Submission and Review of Applications for Funding Under the Montana Coal Endowment Program (MCEP), p. 314, 611
- 8-94-198 Administration of the Federal Community Development Block Grant (CDBG) Program – Planning Grants, p. 550
- 8-111-192 Definitions - Housing Credit Allocation Procedure, p. 1, 279
- 8-119-193 Tourism Advisory Council, p. 100, 399

EDUCATION, Title 10

(Board of Public Education)

- 10-54-291 Transformation Learning Program, p. 1576, 44
- 10-57-288 Teacher Licensing, p. 103
- 10-64-283 School Bus Requirements, p. 140
- 10-66-101 Adult Secondary Education Credits, p. 142, 400

(Office of Public Instruction)

- 10-66-102 State Diplomas, p. 451

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12-556 Closing the Ennis Fishing Access Site and the Valley Garden Fishing Access Site, p. 45
- 12-557 Removal of Tiber Reservoir From the List of Identified Bodies of Water Confirmed or Suspected for Aquatic Invasive Mussels, p. 271
- 12-559 Licensing, p. 325

(Fish and Wildlife Commission)

- 12-551 Licensing, p. 1579, 280
- 12-553 Rest/Rotation and Walk/Wade Rules on the Madison River, p. 1609, 687
- 12-554 Grizzly Bear Demographic Objective for the Northern Continental Divide Ecosystem, p. 8
- 12-555 Recreational Use on the Boulder River, p. 12

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17-417 Methamphetamine Cleanup - Definitions - Decontamination Standards - Performance, Assessment, and Inspection - Performance Standards - Contractor Certification and Training Course Requirements - Reciprocity - Training Provider Certification - Certified Training Provider Responsibilities - Denial, Suspension, and Revocation of Certification - Fees - Sampling - Recordkeeping - Reports - Incorporation by Reference, p. 367
- 17-418 Incorporation by Reference - Hazardous Waste Fees, p. 14, 693
- 17-419 Incorporation by Reference of 40 CFR Part 51, Appendix W, p. 392, 694
- 17-420 Definitions - Development Process for the Adaptive Management Program to Implement Narrative Nutrient Standards, p. 1876, 327

(Petroleum Tank Release Compensation Board)

- 17-416 Eligibility Determination for Petroleum Storage Tank Cleanup, p. 1095, 1771

TRANSPORTATION, Department of, Title 18

- 18-185 Utility Relocation Costs, p. 1360, 1772
- 18-186 Courtesy Car Grant Applications, p. 1445, 1912

- 18-188 Motor Carrier Services Maximum Allowable Weight and Safety Requirements, p. 553

CORRECTIONS, Department of, Title 20

(Board of Pardons and Parole)

- 20-25-71 Paroling Decision - Early Parole Consideration - Administrative Reviews and Reappearances - Board Operating Processes - Executive Clemency Functions, p. 193

JUSTICE, Department of, Title 23

- 23-16-260 Transfer of Interest Among Licensees and to New Owners - Shake-a-Day Games - Changes in Managers - Sports Pools and Sports Tabs - Electronic Player Rewards Systems - Procedure on VGM Malfunction - Use of AARS Data for Player Tracking, p. 1449, 48

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department notices.

- 24-2-390 Public Participation and Model Rules, p. 557
24-11-383 Response Times in Unemployment Insurance, p. 145, 352
24-13-386 Montana HELP Act Workforce Development Services, p. 1461, 235
24-15-201 Employment Relations Division, p. 317, 612
24-16-379 Procedures for Wage and Prevailing Wage Claims, Complaints, Investigations, and Appeals, p. 1713, 152
24-17-380 Prevailing Wage Rates for Public Works Projects, p. 1259, 1913
24-17-389 Prevailing Wages, p. 149, 353
24-21-385 Apprenticeship Ratios, p. 1465, 154
24-22-369 Workforce Innovation and Opportunity Act Montana State Plan Modifications, p. 319
24-22-393 Incumbent Worker Training (IWT) Program, p. 646
24-23-384 Employer Job Growth Incentive Tax Credit, p. 1726, 157
24-29-392 Medical Fee Schedules and Drug Formulary for Workers' Compensation Purposes, p. 650
24-35-376 Independent Contractors, p. 1109, 284
24-38-391 Professional Employer Organizations, p. 561
24-101-311 Requirements for Sexual Offender Evaluation Endorsement, p. 1468, 1920
24-101-313 Multidisciplinary Health Care Provider Task Force Review of Statutes and Recommendations Involving Physicians, Physician Assistants, and Advanced Practice Registered Nurses, p. 320
24-142-3 Elevator Licensing Program - Fee Schedule - Continuing Education Credits Required - Continuing Education Sponsors and Courses, p. 1117, 55

- 24-148-1 Licensure of Genetic Counselors, p. 1477, 1925
24-301-351 Building Codes Incorporation by Reference - Local Government
Enforcement - Plumbing Requirements - Electrical Requirements -
Elevator Code - Special Reports, p. 460

(Unemployment Insurance Appeals Board)

- 24-7-387 Unemployment Insurance Appeals Board, p. 1611, 52

(Board of Barbers and Cosmetologists)

- 24-121-17 Salons - Shops - Mobile Salons or Shops - Schools - Definitions -
General Application and License Display Requirements - Variance
Requests - General Requirements and Prohibitions - License General
Information - Premises, Fixtures, and General Sanitation - Restrooms
- Sinks - Sanitizers - Containers - Cabinets - Implements - Instruments
- Supplies - Equipment - Sanitizing - Disinfecting - Preparation Storage
- Handling - Prohibited Items - Blood Spills - Continuing Education
Instructors - Unprofessional Conduct - Inspections - Name Change -
Closure - Change of Ownership - Operation Standards - Lighting, p.
826, 1773

(Board of Clinical Laboratory Science Practitioners)

- 24-129-19 Minimum Licensure Standards, p. 322

(Board of Dentistry)

- 24-138-81 Fee Schedule - Approved Clinical Exam Criteria for Dentists and
Dental Hygienists - Dental Hygiene Local Anesthetic Agent
Certification, p. 1472, 54
24-138-82 Fee Schedules - Clinical Exam Criteria, p. 565

(Board of Medical Examiners)

- 24-156-92 Definitions - ECP Licensure Qualifications - ECP License Application -
Continued Competency Requirements - Fee Schedule - Fees - Final
Pre-Licensing Examinations, p. 1482, 520

(Board of Nursing)

- 24-159-92 Board of Nursing, p. 658

(Board of Pharmacy)

- 24-174-78 Pharmacy Technician Registration Requirements - Ratio of Pharmacy
Technicians and Interns to Supervising Pharmacists - Application for
Approval of Utilization Plan, p. 32, 401

(Board of Physical Therapy Examiners)

- 24-177-36 Examinations - Unprofessional Conduct, p. 1263, 1926

(Board of Professional Engineers and Professional Land Surveyors)

- 24-183-45 Fee Schedule, p. 569

(Board of Psychologists)

24-189-43 Fee Schedule - Behavior Analyst Experience and Supervision, p. 454

(Board of Public Accountants)

24-201-54 Board Organization - Definitions - Firms—Registration - Nonroutine Applications - Board Meetings - Committees - Cheating - Introduction - Renewals, p. 1170, 1776

(Board of Real Estate Appraisers)

24-207-46 Real Property Appraiser Qualification and Continuing Education, p. 457

(Board of Realty Regulation)

24-210-47 Fee Schedule - Trust Account Requirements - Unprofessional Conduct for Property Management Licensees - Reasonable Supervision - High Level of Supervision, p. 848, 1778

24-210-48 Fee Schedule - General License Administration Requirements - Supervising Broker Endorsement - Application for License—Salesperson and Broker - Property Management License Transfer Requirements - Unprofessional Conduct for Property Management Licensees - Predetermination for Licensing, p. 1881, 238

(Board of Behavioral Health)

24-219-36 License Requirements for Clinical Social Workers (LCSW), Licensed Master's Social Workers (LMSW), Licensed Baccalaureate Social Workers (LBSW), Licensed Clinical Professional Counselors (LCPC), Licensed Marriage and Family Therapists (LMFT), and Licensed Addiction Counselors (LAC) - Examination—LAC - Professional Counselor Licensure Candidate Requirements - Continuing Education Requirements, p. 1176, 1783

LIVESTOCK, Department of, Title 32

32-21-321 Scope of Rules, p. 1267, 158

32-22-328 Importation of Camelids, p. 667

(Board of Milk Control)

32-21-325 Milk Control Assessments, p. 1730, 239

32-21-326 Reports and Records - Computation of the Quota Price and Excess Price to Be Paid to Pool Producers for Pool Milk - Procedures for Pooling of Returns From Pool Milk, p. 1733, 240

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-214 Horse Creek Controlled Groundwater Area, p. 670

(Board of Water Well Contractors)

36-22-213 Water Well Licensing - Construction Standards, p. 490

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- 37-909 Assisted Living Rules Related to Background Checks and Category D Endorsement, p. 1736, 354
- 37-954 Certificate of Need, p. 1619, 57
- 37-959 Child Care Licensing, p. 1277, 1787
- 37-961 Public Participation, p. 1290, 1790
- 37-963 Comprehensive School and Community Treatment, p. 1490, 1757, 159
- 37-965 Health Emergency Waiver, p. 1294, 1791
- 37-966 Optometric Services Rates, p. 1364, 1927
- 37-967 Marijuana Sampling Protocols, p. 1629, 58
- 37-968 Montana Telecommunications Access Program, p. 1500, 1934
- 37-969 Big Sky Rx Benefit, p. 1504, 1935
- 37-972 Updating the Effective Dates of Medicaid Fee Schedules, p. 1887, 241
- 37-973 Child-Facing Employee Certification and Supervisory Training, p. 209, 613
- 37-974 Child-Placing Agency Definitions, p. 214, 537
- 37-976 HMK Dental Procedure Codes, p. 573
- 37-978 Medicaid Fee Schedules and Effective Dates, p. 395, 695
- 37-983 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 576
- 37-989 Nursing Facility Reimbursement, p. 590
- 37-993 Developmental Disabilities Waiver Program Reimbursement, p. 672

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38-2-249 Department's Procedures for Collecting Fees and Other Charges, p. 1194, 1936
- 38-5-248 Advanced Metering Opt-Out, p. 111, 896, 1792
- 38-5-250 Montana Energy Impact Assistance Financing, p. 217, 494
- 38-5-251 Pipeline Safety, p. 1507, 242
- 38-5-252 Utility Electricity Voltage, p. 1510, 243
- 38-5-253 Montana's Renewable Energy Resource Standard, p. 221, 538

REVENUE, Department of, Title 42

- 42-1033 Implementation of the Montana Marijuana Regulation and Taxation Act, p. 1369, 1937, 81
- 42-1037 Temporary Operating Authority for Alcoholic Beverage License Applicants, p. 1132, 244
- 42-1038 2022 Personal Property Depreciation Schedules and Trend Tables - Updated Business Equipment Exemption, p. 1301, 1802
- 42-1039 Debtor Appeals of Department Collections, p. 1399, 1963

42-1040	Implementation of Compliance and Enforcement Requirements of the Montana Marijuana Regulation and Taxation Act - Local-Option Marijuana Excise Taxation, p. 1513, 1964, 82
42-1041	Innovative Education Program Donations to School Districts and Student Scholarship Organizations (SSO), p. 1530, 1968
42-1042	Medical Marijuana Program Rules - Implementation of the Montana Marijuana Regulation and Taxation Act, p. 1534, 1971
42-1043	Lodging Facility Sales and Use Taxes - Rental Vehicle Sales and Use Taxes, p. 1653, 248
42-1044	Competitive Bid Form Requirements, p. 38, 288
42-1045	Electrical Generation and Transmission Facility Exemptions - New or Expanded Industry Credit for Corporate Income Taxes, p. 1759, 166
42-1047	Former DPHHS Regulations for Failed Laboratory Test Samples, p. 223, 403
42-1048	Marijuana and Marijuana Products Packaging and Labeling Application and Approval Process, p. 274, 594
42-1049	Department Processing and Remittance of Local-Option Marijuana Excise Tax Collections to Localities, p. 497
42-1050	Eliminated Tax Credits, p. 500
42-1051	Licensed Premises Proximity Requirements to Places of Worship or Schools, p. 504

SECRETARY OF STATE, Office of, Title 44

44-2-246	Testing of Vote Tabulation Machines, p. 1200, 167
44-2-250	Voter Registration Requirements - Provisional Registration - Late Registration Procedures - Voter Identification - Related Definitions, p. 1309, 169
44-2-251	Maintenance of Active and Inactive Voter Registration Lists for Elections, p. 1667, 83
44-2-252	Registration of a Person Who Employs a Paid Signature Gatherer, p. 1669, 175
44-2-255	Election Security Definitions - Security Assessment Requirements - Security Awareness Training Requirements - Physical Security Requirements - Additional Election Security Requirements - Definitions Related to the Examination of Voting Machines and Devices, p. 507, 676
44-2-256	Procedures Facilitating Disabled Voter Access, p. 514
44-2-257	Reduction of Business Services Filing Fees, p. 603
44-2-258	Minor Parties, p. 683

(Office of the Commissioner of Political Practices)

44-2-253	Campaign Finance Laws, p. 1763, 1893, 253
44-2-254	Child-Care Expenses - Campaigns, p. 225, 404

EXECUTIVE BRANCH APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in April 2022 appear. Potential vacancies from June 1, 2022 through June 30, 2022, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of May 1, 2022.

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

EXECUTIVE BRANCH APPOINTEES FOR APRIL 2022

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Dentistry			
Mr. Allen L. Casteel	Governor	Reappointed	4/1/2022
Great Falls			4/1/2027
Qualifications (if required): Denturist			
Mr. James B. Corson	Governor	Reappointed	4/1/2022
Billings			4/1/2027
Qualifications (if required): Public Representative			
Ms. Jill Frazier	Governor	Leslie Hayes	4/1/2022
Missoula			4/1/2027
Qualifications (if required): Dentist			
Ms. Renee Parsley Mulcahy	Governor	Diedri Durocher	4/1/2022
Helena			4/1/2027
Qualifications (if required): Dental Hygienist			
Public Employee Retirement System			
Ms. Sonja Woods	Governor	Reappointed	4/1/2022
Miles City			4/1/2027
Qualifications (if required): Active member of public retirement system			

EXECUTIVE BRANCH VACANCIES – JUNE 1, 2022 THROUGH JUNE 30, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Nursing Home Administrators		
Ms. Sylvia Moore, Clancy Qualifications (if required): Public at-large and must be 55 years of age or older	Governor	6/1/2022
Mrs. Carla A. Neiman, Plains Qualifications (if required): Rep. of professions or institutions caring for chronically ill and infirmed aged patients	Governor	6/1/2022
Mr. Ryan Gregory Tooke, Forsyth Qualifications (if required): Nursing Home Administrator	Governor	6/1/2022
Mr. William Otis Bronson, Great Falls Qualifications (if required): Profession or Institution Concerned with the Care of the Chronically Ill	Governor	6/1/2022
Board of Professional Engineers and Professional Land Surveyors		
Ms. Tracy Worley, Missoula Qualifications (if required): Representative of the public	Governor	6/1/2022
Mental Disabilities Board of Visitors		
Mr. Jeffrey Folsom, Helena Qualifications (if required): Developmental disabilities professional	Governor	6/30/2022
Mrs. Deborah Horton, Billings Qualifications (if required): Experience with treatment and welfare of adults with mental illness	Governor	6/30/2022

EXECUTIVE BRANCH VACANCIES – JUNE 1, 2022 THROUGH JUNE 30, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Mental Disabilities Board of Visitors Continued		
Mr. Daniel Timothy Laughlin, Anaconda	Governor	6/30/2022
Qualifications (if required): Skills, knowledge, and experience of adults with developmental disabilities		
Montana Pulse Crop Committee		
Mr. Matthew William Franks, Sheridan	Governor	6/30/2022
Qualifications (if required): Representative of the pulse industry		
Dr. Sreekala Bajwa, Bozeman	Governor	6/30/2022
Qualifications (if required): Dean of Agriculture of Montana State University		
Montana Wheat and Barley Committee		
Representative Llew Jones, Conrad	Governor	6/1/2022
Qualifications (if required): Citizen of Montana		
Mr. Max Cederberg, Turner	Governor	6/1/2022
Qualifications (if required): Citizen of Montana		
State Banking Board		
Mr. Kevin Davis, Missoula	Governor	6/30/2022
Qualifications (if required): Public member		
State Library Commission		
Ms. Tammy Hall, Bozeman	Governor	6/1/2022
Qualifications (if required):		

EXECUTIVE BRANCH VACANCIES – JUNE 1, 2022 THROUGH JUNE 30, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Library Commission Continued		
Mr. Bruce Newell, Helena	Governor	6/1/2022
Qualifications (if required): Public Representative		
Underground Facility Protection Advisory Council		
Mr. John Cross, Glendive	Governor	6/30/2022
Qualifications (if required): Member representing a public utility that is a jurisdictional pipeline		

MONTANA ADMINISTRATIVE
REGISTER

2022 ISSUE NO. 10
MAY 27, 2022
PAGES 708-855

CHRISTI JACOBSEN
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620