

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 6.6.4202, 6.6.4203, 6.6.4204,) AMENDMENT
6.6.4211, and 6.6.4212 pertaining to)
the Continuing Education Program for) NO PUBLIC HEARING
Insurance Producers and Consultants) CONTEMPLATED

TO: All Concerned Persons

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

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 September 5, 2023, 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) 444-3413; TDD (406) 444-3246; or e-mail csi@mt.gov.

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

6.6.4202 DEFINITIONS For the purposes of this subchapter, the following terms have the following meanings:

(1) through (7) remain the same.

~~(8) "Proctor" means a person who monitors the attendance and conduct of the examination process for course participants, but who does not participate in course presentations, activities or discussions or complete any required examinations.~~

(9) through (12) remain the same but are renumbered (8) through (11).

AUTH: 33-1-313, 33-17-1206, MCA

IMP: 33-17-1203, 33-17-1204, MCA

6.6.4203 COURSE SUBMISSIONS (1) and (2) remain the same.

~~(3) Requests for approval of courses must be received by the commissioner no less than 15 days prior to the anticipated starting date of the course, except as provided in (14). A sponsoring organization must submit each course for review and receive approval of the course prior to making that course available for enrollment by licensees. If the commissioner determines that the course content is incomplete or inadequate, the provider will be notified and required to supplement or modify the course before receiving approval.~~

(4) through (7) remain the same.

(8) Except as provided in (15), course approval is for a period of two years following the course approval date. A course without significant changes may be renewed ~~without advisory council approval~~ in a form approved by the commissioner. (9) through (15) remain the same.

AUTH: 33-1-313, 33-17-1206, MCA
IMP: 33-17-1204, MCA

6.6.4204 QUALIFICATIONS FOR INSTRUCTORS (1) through (4) remain the same.

~~(5) Proctors will not earn continuing education credit for their services.~~

AUTH: 33-1-313, 33-17-1206, MCA
IMP: 33-17-1203, 33-17-1204, MCA

6.6.4211 REQUESTS FOR RECONSIDERATION OF CREDIT HOUR ASSIGNMENT (1) remains the same.

(2) ~~The advisory council~~ commissioner shall evaluate any submitted requests for reconsideration, the original course submission, and any additional materials provided to support the request for reconsideration within 60 days of the submission.

(3) After evaluating the request for reconsideration, the ~~advisory council~~ commissioner will ~~may recommend to the commissioner to~~ increase, decrease, or maintain the credit hours assigned to the course. The ~~council~~ commissioner shall only ~~recommend~~ assign one credit per 50 minutes of instruction.

(4) The commissioner will ~~review the recommendation of the advisory council~~ and assign credit hours to the course.

(5) and (6) remain the same.

AUTH: 33-1-313, 33-17-1206, MCA
IMP: 33-17-1204, MCA

6.6.4212 REQUESTS FOR RECONSIDERATION OF COURSE DISAPPROVAL (1) remains the same.

~~(2) The advisory council shall review a request for reconsideration, the original course submission, and any additional materials provided to support the request within 60 days of the request. The advisory council shall then make a recommendation to the commissioner to approve or disapprove.~~

~~(3) The commissioner shall review the recommendation of the advisory council and approve or disapprove the course.~~

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

AUTH: 33-1-313, 33-17-1206, MCA
IMP: 33-17-1204, 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. The 68th Montana Legislature passed House Bill 61, revising review and approval of continuing education courses.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3413; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., September 22, 2023.

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., September 22, 2022.

7. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 10 persons based on a conservative estimate of how frequently CSI receives questions about the above-stated rules per year.

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

/s/ Ole Olson
Ole Olson
Rule Reviewer

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

Certified to the Secretary of State August 15, 2023.

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through V pertaining to) PROPOSED ADOPTION
Regulatory Sandbox Waivers)

TO: All Concerned Persons

1. On September 14, 2023, at 9:00 a.m., the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) will hold a public hearing in the basement conference room of CSI, at 840 Helena Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

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 September 5, 2023, 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) 444-3413; TDD (406) 444-3246; or e-mail csi@mt.gov.

3. HB 836 provides for a "regulatory sandbox" waiver of certain provisions of the Montana Insurance Code. HB 836 has not yet been codified. As such, all references to HB 836 provisions use the section designations set forth in HB 836.

4. The rules proposed to be adopted are as follows:

NEW RULE I APPLICATION REQUIREMENTS (1) An application for a waiver under [HB 836, Section 1] must include the following information:

- (a) the identity of the insurer applying for the waiver;
- (b) the identity of the directors and executive officers of the insurer, any persons who are beneficial owners of 10% or more of the voting securities of the insurer, and any officers of the insurer;
- (c) a description of the product or service to be offered if the waiver is granted, including how the product or service functions and the manner and terms on which it must be offered;
- (d) a description of the potential benefits to consumers of the product or service;
- (e) a description of the potential risks, including but not limited to financial risks, to consumers posed by the product or service or approval of the proposed waiver and how the applicant proposes to mitigate the risks;
- (f) a statement that the insurer has a physical presence in the state and has a certificate of authority issued by the commissioner to write insurance in the state;
- (g) a filing fee of \$1,000 unless the submission is complex and lengthy, in which case the commissioner will provide an estimate of the fee that is

commensurate with regulatory costs for consideration of the submission. The insurer may withdraw the submission after receiving the estimate;

(h) a specific explanation of how the waiver sought would meet each of the criteria set forth in [HB 836, Section 1(1)];

(i) certification that the waiver sought does not fall into any of the prohibited categories set forth in [HB 836, Section 1(7)]; and

(j) a description of the insurer's plan for winding down the proposed program or activity pursuant to [HB 836, Section 1(12)].

(2) The application shall be submitted on a form designated by the commissioner and made available to applicants on the Montana State Auditor's website.

(3) At the time of submission, an applicant may request to protect confidential trade secrets contained in an application. The request must include an affidavit that clearly states the facts supporting the claim to trade secret protection with sufficient specificity to enable the reviewer to clearly understand the nature and basis of the claims to confidentiality, including an explanation of how the information meets the definition of "trade secret" under 30-14-402(4), MCA.

AUTH: [HB 836, Section 1]

IMP: [HB 836, Section 1]

NEW RULE II WAIVER MONITORING (1) At the time of granting a waiver, the commissioner shall provide an insurer granted a waiver under [HB 836, Section 1] with a list of reporting requirements and dates for reporting.

AUTH: [HB 836, Section 1]

IMP: [HB 836, Section 1]

NEW RULE III WAIVER REVOCATION (1) The commissioner may revoke a waiver if the insurer who obtains the waiver fails to comply with any terms, conditions, or limitations established by the commissioner, the requirements of [HB 836, Section 1], or if the waiver is causing harm to a consumer or causes material harm to the insurer's solvency.

(2) The commissioner shall give the insurer written notice of intent to revoke the waiver, and the insurer shall have ten days to respond to the notice.

(3) Following the insurer's response, if the commissioner is not satisfied that the condition warranting revocation is cured, the commissioner shall send final written notice revoking the waiver.

(4) If the reasons described in (1) of this rule pose a threat of harm in the absence of immediate action, the commissioner may immediately revoke the waiver pending the insurer's response.

AUTH: [HB 836, Section 1]

IMP: [HB 836, Section 1]

NEW RULE IV WAIVER EXTENSION (1) An extension request under [HB 836, Section 1(3)(b)] must be submitted to the commissioner within 45 days of the

expiration of the waiver period. This request must include the length of the extension period requested and the specific reasons why the extension is necessary. These specific reasons must include an analysis of the effectiveness of the waiver in meeting the goals set forth in the initial waiver application.

AUTH: [HB 836, Section 1]

IMP: [HB 836, Section 1]

NEW RULE V EXPEDITED WAIVER APPLICATIONS (1) Where a product or service has been granted a waiver by the Commissioner, any applicant wishing to offer a substantially similar product or service may file an expedited application meeting the following requirements:

(a) An application must be submitted on the same form described in [New Rule I](2). The applicant must indicate that the application is an expedited application under this rule.

(b) An application must specifically identify the previously granted waiver and explain in detail how the product or service it anticipates offering is substantially similar to those offered under the previously-granted waiver.

(c) An application under the expedited process does not need to comply with [New Rule I(1)(d), (e), and (i)].

AUTH: [HB 836, Section 1]

IMP: [HB 836, Section 1]

5. 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. The 68th Montana Legislature passed House Bill 836, creating a "regulatory sandbox" waiver program and directing the commissioner to adopt procedures for submissions and granting, denying, monitoring, and revoking petitions for a waiver pursuant to the new law. The requirements set forth in the proposed rules provide for orderly submission of applications and are designed to elicit the information necessary for the commissioner to make a decision on any waiver applications submitted pursuant to this program, and to allow the commissioner to effectively administer and monitor the waiver program.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3413; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., September 22, 2023.

7. Andrew Cziok, CSI Legal Counsel, has been designated to preside over and conduct this hearing.

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 6 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, apply and have been fulfilled. The primary bill sponsor was contacted by email on July 21, 2023.

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

/s/ Andrew Cziok
Andrew Cziok
Rule Reviewer

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

Certified to the Secretary of State August 15, 2023.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PUBLIC HEARING ON
RULE I and NEW RULE II and the	)	PROPOSED ADOPTION AND
amendment of ARM 17.36.101,	)	AMENDMENT
17.36.112, 17.36.123, 17.36.310,)	
17.36.321, 17.36.323, 17.36.605,	)	(SUBDIVISIONS)
17.36.610, 17.36.802, 17.36.914,)	
17.36.918, 17.38.101, and)	
17.38.102, pertaining to the review of)	
sanitation facilities in subdivisions)	
such as water wells, onsite sewage)	
disposal systems, and stormwater)	
amenities. In addition, the proposed)	
amendment to Circular DEQ-4 and)	
Circular DEQ-20)	

TO: All Concerned Persons

1. On September 18, 2023, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf building, in Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

Members of the public may participate either in-person or virtually. For in-person meetings. Registration with Zoom may be made at the following link: Join Zoom Meeting

Join Zoom Meeting

Please click the link below to join the webinar:

<https://mt-gov.zoom.us/j/87310093745?pwd=a1d0NjBkNGVobEc2YW1xWVYrR04vQT09>
Passcode: 305574

Or One tap mobile :

+12133388477,,87310093745#,,,,*305574# US (Los Angeles)

+12063379723,,87310093745#,,,,*305574# US (Seattle)

Or Telephone:

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

+1 213 338 8477 US (Los Angeles)

+1 206 337 9723 US (Seattle)

+1 646 558 8656 US (New York)

Webinar ID: 873 1009 3745

Passcode: 305574

International numbers available: <https://mt-gov.zoom.us/j/87310093745>

Or an H.323/SIP room system:

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

Meeting ID: 873 1009 3745

Passcode: 305574

SIP: 87310093745@zoomcrc.com

Passcode: 305574

Please contact Loryn Johnson, paralegal, at the Department of Environmental Quality at (406) 444-1388 or Loryn.Johnson2@mt.gov should you encounter any difficulties.

2. The Department of Environmental Quality 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 Environmental Quality no later than 5:00 p.m. on September 11, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQSubDivRuleUpdate@mt.gov.

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

NEW RULE I CERTIFICATION OF INDEPENDENT REVIEWERS AS THE REVIEWING AUTHORITY (1) An engineer or sanitarian may be certified as an independent reviewer to review files under 76-4-104(4), MCA, subject to the requirements in this rule.

(2) An engineer or sanitarian must complete the following before becoming certified as an independent reviewer to perform subdivision reviews:

(a) complete a training program developed by the department; and
(b) pass, with a score of at least 90 percent, a written examination administered by the department that demonstrates knowledge of:

- (i) Title 76, chapter 4, MCA;
- (ii) this chapter;
- (iii) applicable department circulars;
- (iv) Title 75, chapter 5, MCA;
- (v) ARM Title 17, chapter 30, subchapters 5 and 7; and
- (vi) other applicable laws and regulations.

(3) An independent reviewer is subject to the limitations and requirements set forth in 76-4-104(12) through (15), MCA.

(4) To maintain certification, an independent reviewer must have completed at least one subdivision review in the preceding two years. Independent reviewers who have not completed at least one subdivision review in the preceding two years shall satisfy the requirements in (2)(b) prior to performing subdivision review.

(5) The department may suspend or revoke the certification of an independent reviewer if the department determines that the independent reviewer has not complied with the Sanitation in Subdivisions Act or other applicable statutes or rules.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: HB 364 from the 2023 legislative session required the department to assign certified independent reviewers to review subdivision applications if the department receives 110 or more new applications in a month. The requirement in proposed (2) fulfills the department's statutory obligation to develop procedures for certification of independent reviewers and to develop a training curriculum. The requirements to become certified in proposed (2)(b) are identical to those required by local boards of health in order to review subdivision files. Making the certification criteria match will ensure that existing training and exams can be used to certify independent reviewers. In addition, the existing criteria for local boards of health have a demonstrated track record for determining whether a reviewer is competent. Proposed (3) will ensure there are no conflicts between statute and rules. Proposed (4) is the same requirement as that for local health authorities and ensures that independent reviews are up to date on new procedures and rules. Proposed (5) is necessary to ensure that independent reviewers comply with the Sanitation in Subdivisions Act and other applicable requirements.

NEW RULE II SUBDIVISIONS EXEMPT FROM MEPA REVIEW (1) A department action under this subchapter is exempt from conducting an environmental review under Title 75, chapter 1, parts 1 and 2, MCA, if the subdivision meets the criteria in [SB 240].

(2) To qualify for this exemption, the applicant must submit a detailed explanation and supporting documentation and maps that demonstrate compliance with the criteria in [SB 240].

AUTH: [SB 240]
IMP: [SB 240]

REASON: This proposed new rule implements SB 240 from the 2023 legislative session, which set criteria for when subdivision applications are exempt from MEPA review. Proposed (1) ensures there are no conflicts between rule and statute. Proposed (2) identifies the information the applicant needs to submit in order to verify the subdivision application is eligible for the MEPA exemption. Department mapping shows properties eligible for the MEPA exclusion are located in Glacier County (one location), Liberty County (one location), Hill County (one location), Blaine County (two locations), and Valley County (one location). The map can be viewed at <https://deq.mt.gov/files/Water/WQInfo/Documents/Subdivisions/MEPA-Exclusion-Area-Map.jpg>.

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

17.36.101 DEFINITIONS (1) through (65) remain the same.

(66) "Well isolation zone" means the area within a 100-foot radius of a water well unless a smaller, site-specific radius is approved by the department under Circular DEQ-20, Standard 1.8.

(67) remains the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: SB 327 modified the definition of "well isolation zone" in 76-4-102, MCA, to allow the department to approve a source-specific well isolation zone that is smaller than 100 feet. The proposed amendment to (66) is necessary to ensure that the regulatory definition reflects the statutory change and to direct applicants to the appropriate review criteria.

17.36.112 REVIEW OF PREVIOUSLY APPROVED FACILITIES: PROCEDURES (1) remains the same.

(2) A facility previously approved by a local reviewing authority but not under Title 76, chapter 4, MCA, is not subject to review if the applicant submits evidence that the facility:

(a) meets the criteria in (1);

(b) complies with all required setbacks in ARM 17.36.323; and

(c) if the lot was created after the effective dates for mixing zones and well isolation zones, complies with all required setbacks in ARM 17.36.122.

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

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: SB 285 from the 2023 legislative session required the department to provide a basis for exempting from review facilities previously approved by a local reviewing authority if certain enumerated criteria were met. Proposed (2) establishes the statutorily prescribed procedure in rule. Proposed (2)(a) requires compliance with the criteria in (1)(a) through (c) because those are the same criteria mandated by SB 285. The bill also required compliance with setback rules, and (2)(b) and (c) are necessary to provide cross-references to the relevant setback requirements.

17.36.123 CONNECTION TO PUBLIC WATER SUPPLY AND WASTEWATER SYSTEMS (1) through (3) remain the same.

(4) Subject to the criteria in (2) and (3), a municipal or county water and/or sewer district must accept a connection request from a proposed subdivision and make public wastewater service available if requested by an applicant if:

(a) any boundary of the subdivision is within 1000 feet of any component of a public municipal or county sewer district wastewater system; and

(b) any boundary of the subdivision borders surface water or where surface water is present or the subdivision is unable to pass the nonsignificance criteria in 75-5-301, MCA, for surface water impacts.

(5) In addition to new water and sewer facilities in (1), this rule applies to rewrites of certificates of subdivision approval that include an increase in water or wastewater flows or load and to reviews of lots that were created under ARM 17.36.605(2)(a).

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: SB 215 of the 2023 legislative session required the department to adopt rules requiring connection to an existing municipal or county sewer district main if any boundary of the subdivision is less than 1000 feet of the municipal or county sewer district mains, if the boundary of the subdivision is adjacent to surface waters, or if the subdivision fails the nonsignificance analysis in Title 75, chapter 5, MCA, and the parent system has adequate capacity and water rights to meet the needs of the subdivision. Proposed (5) clarifies that this rule also applies to rewrites to existing certificates of subdivision approval that increase water demand or wastewater volume or load and to lots created with the ARM 17.36.605(2)(a) exclusion. Increasing water demand or wastewater volume or load, such as by the addition of a second dwelling unit or expansion of the capacity of a commercial unit, will have similar impacts as new sewage disposal facilities and should be subject to this rule. Likewise, development of lots that were initially created under the no-facilities exclusion under ARM 17.36.605(2)(a) will have similar impacts and should be subject to this rule.

17.36.310 STORM DRAINAGE (1) through (5) remain the same.

~~(6) The reviewing authority shall exempt the~~ The requirements of (1), (2), (3), and (4) are not required for either of under the following circumstances:

(a) subdivisions located entirely within a first-class or second-class municipality, as described in 7-1-4111, MCA, or within a Municipal Separate Storm Sewer System (MS4) general permit area, as defined in ARM 17.30.1102, if:

(i) remains the same.

(ii) the municipal or MS4 entity either accepts the stormwater into a municipal storm water system or requires the applicant to comply with municipal or MS4 storm water drainage design standards;

(b) lots 5 acres or larger in size if the applicant provides information demonstrating that the total impervious area on the lot will be less than 5% of the lot area, including easements and right-of-ways; or

(c) lots that are exempt from review under 76-3-207(1)(a), (d), (e), or (f), MCA, if the parcels are used for one living unit and no more than 25% of each qualifying parcel is impervious. To qualify for this exemption, the applicant must provide an estimate of each parcel's total impervious area and verification of the intended use. A change in the percentage of impervious area beyond 25% or changing from more than one living unit will require review.

(7) through (10) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendments to the first sentence of (6) consist of housekeeping changes to improve readability. The proposed amendment to (6)(c) implements the requirements of SB 285 from the 2023 legislative session, which directed the department to establish a new storm water exception pursuant to specific enumerated criteria. Because the statutory exemption is available only if the lot is used for single-family residential purposes and if the lot includes no more than 25% impervious area, it is necessary to require the applicant to provide information demonstrating the number of living units and the amount of impervious area. Likewise, it is necessary to provide clarity that the exemption is no longer valid if those criteria are no longer met in the future.

17.36.321 SEWAGE SYSTEMS: ALLOWABLE NEW AND REPLACEMENT SYSTEMS (1) and (2) remain the same.

(3) The following sewage systems may not be used for new systems, but may be used as replacement systems subject to the limitations provided in Department Circular DEQ-4:

- (a) ~~cut systems;~~
- (b) ~~fill systems;~~
- (c) through (g) remain the same but are renumbered (a) through (e).
- (4) and (5) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: Under the department's existing rules, cut and fill systems are prohibited for new systems but may be used as replacement systems. In HB 592, the 2023 Legislature directed the department to remove the prohibition for new systems. The proposed changes to ARM 17.36.321 are necessary to implement that statutory directive.

17.36.323 SETBACKS (1) Minimum setback distances, in feet, shown in Table 2 of this rule must be maintained, except as provided in the table footnotes or as allowed through a deviation granted under ARM Title 17, chapter 38, subchapter 1. The setbacks in this rule are not applicable to gray water irrigation systems that meet the setbacks and other requirements of ARM 17.36.319.

TABLE 2
SETBACK DISTANCES
(in feet)

From	To Drinking Water Wells	To Sealed Components (1) and Other Components (2)	To Drainfields/Soil Absorption Systems (3)
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Public or multiple-user drinking water wells/springs	-	100 (4)	100
Individual and shared drinking water wells	-	50 (4) (18)	100 (18)
Other wells (5)	-	50 (4)	100 (4)
Suction lines	-	50	100
Cisterns	-	25	50
Roadcuts, escarpment	-	10 (6)	25
Slopes > 35 percent (7)	-	10 (6)	25
Property boundaries	10 (8)	10 (8)	10 (8)
Subsurface drains	-	10	10
Water mains	-	10 (9)	10
Drainfields/Soil absorption systems	100	10	-
Foundation walls	-	10	10
Surface water (10), springs	100 (4) (11) (12)	50 (4) (11)	100 (4) (11) (13)
Floodplains	10 (4) (11)	- Sealed components - no setbacks (1) Other components - 100 (2) (4) (11)	100 (11) (14)
Mixing zones	100 (4) (18)	-	-
Storm water ponds and ditches (15)	25 (4) (16)	10 (4)	25 (4)
Sewage Lagoons	1000 (17)	-	-

Footnotes (1) through (11) remain the same.

Footnote (12) Pursuant to ~~ARM 17.36.334~~ Department Circular DEQ-20, the reviewing authority may require greater than a 100-foot horizontal separation between a well and surface water if there is a potential that the well may be influenced by contaminants in the surface water.

Footnotes (13) through (17) remain the same.

Footnote (18) This setback applies unless the department has approved a smaller source-specific well isolation zone under Department Circular DEQ-20, Standard 1.8. In that case, the source specific well isolation zone distance applies.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendment to Footnote 12 corrects an incorrect citation.

SB 327 from the 2023 legislative session directed the department to allow source-specific well isolation zones that are smaller than 100 feet. The proposed addition of Footnote 18 reflects the department's authority to allow the source-specific well isolation zone smaller than 100 feet under Circular DEQ-20, Standard 1.8.

17.36.605 EXCLUSIONS (1) and (2) remain the same.

~~(3) Aggregations of parcels are not subdivisions subject to review, except that an aggregation is subject to review under 76-4-130, MCA, if any parcel included in the aggregation has a previous approval issued under Title 76, chapter 4, part 1, MCA.~~

AUTH: 76-4-104, MCA
IMP: 76-4-125, MCA

REASON: Current ARM 17.36.605(3) provides that aggregations are not subdivisions and are reviewed only under 76-4-130, MCA, which applies when a parcel included in an aggregation has a prior approval under the Sanitation Act. This rule provision was based on a previous legal opinion rather than direct statutory language.

SB 285 from the 2023 legislative session contained an express exemption for aggregations from Sanitation Act review. Therefore, it is not necessary to have additional language in rule exempting such aggregations. This proposed deletion ensures there is no conflict between the rule and the statute.

17.36.610 CERTIFYING AUTHORITY UNDER 76-4-127, MCA (1) remains the same.

(2) A municipality is eligible to be a certifying authority under 76-4-127, MCA, if the municipality:

(a) remains the same.

~~(b) is a first or second class municipality or is within a jurisdictional area covered by a growth policy pursuant to Title 76, chapter 1, MCA; and~~

~~(c) has an on-staff or retained professional engineer to certify compliance with department design standards for water, wastewater, and storm water facilities; and~~

(c) when applicable, certifies the additional connections are subject to the provisions of Title 76, chapter 3, MCA, and the municipality is in compliance with a development plan approved by the department pursuant to ARM 17.38.101(20).

(3) A municipality that has been authorized to act as a certifying authority under this rule may be authorized to approve requests for a subdivision exemption under 76-4-125(1)(d), MCA, if the on-staff or retained professional engineer has completed an annual training program conducted by the department.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, 76-4-127, MCA

REASON: The proposed deletion of (2)(b) reflects enactment of HB 55 in 2019, which removed the limitation that the municipal facilities exemption could only be used in first and second class municipalities and jurisdictional areas covered by a growth policy.

SB 237 from the 2023 legislative session directed the department to allow municipal systems to authorize connections beyond their current rated capacity with a department-approved development plan. Consistent with SB 237, proposed (2)(c) provides that capacity under a development plan can be used to authorize new connections for review under Title 76, chapter 4, MCA. Details for the development plan conditions are set forth in ARM 17.38.101(19).

Proposed (3) implements HB 364 from the 2023 legislative session, which directed the department to allow municipalities, in lieu of the reviewing authority, to approve requests for a municipal facilities exclusion under 76-4-125(1)(d), MCA. To ensure the exemptions are approved when appropriate, proposed (3) requires the municipality to complete an annual training session regarding the appropriate use of the municipal facilities exclusion. Annual re-training will ensure municipal employees stay up to date on any changes to the applicable statutes or rules.

17.36.802 FEE SCHEDULES (1) An applicant for approval under this subchapter shall pay the following fees:

- (a) remains the same.
- (b) type of water system:
 - (i) individual or shared water supply system (existing, previously approved, and proposed)
 - (A) per unit \$110
 - (B) source-specific well isolation zone, each \$250
 - (ii) and (iii) remain the same.
- (c) type of wastewater disposal:
 - (i) existing or previously approved systems per unit \$90
 - (ii) new gravity fed system per drainfield \$120
 - (iii) new dosed system, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems:
 - (A) per design ~~\$ 240~~ \$180 (plus \$130/hour for review in excess of two hours)
 - (B) per drainfield ~~\$ 60~~ \$120
 - [(iv) through (vi) missing]
- (d) other:
 - (i) through (vi) remain the same.
 - (vii) storm drainage plan review:
 - (A) and (B) remain the same.
 - (C) storm water review exception \$130
 - (viii) preparation of environmental assessments/environmental impact statements/MEPA exemptions: actual cost

(ix) remains the same.

AUTH: 76-4-105, MCA

IMP: 76-4-105, MCA

REASON: The department is proposing three new review fees in response to the enactment of SB 327, SB 240, and SB 285 in the 2023 legislative session. No fee changes are proposed for existing fee items that were not changed by legislation.

Proposed (1)(b)(i)(B) sets a new \$250 fee for source-specific well isolation zone (SSWIZ) reviews. The department estimates SSWIZ reviews will take approximately the same amount of time as source-specific mixing zones, so the same fee is proposed. Because this is a new procedure enacted by the 2023 Legislature, the department cannot estimate the number of persons who may request a SSWIZ. Proposed (1)(c)(iii)(A) reduces the existing fee for design of non-gravity drainfields from \$240 to \$180 to reflect lower costs for reviewing designs. SB 285 eliminated design details for most individual and shared systems, and this fee change reflects the amount of time it would take the department or a county contracted to do subdivision reviews to complete the review. Proposed (1)(c)(iii)(B) increases the fees for non-gravity drainfields to match the existing fees for gravity drainfields of \$120, because those reviews have similar levels of effort. Because individual and shared onsite wastewater systems no longer require design fees, the department believes that this fee change will ultimately reduce the overall fees required for individual and shared onsite wastewater systems. The department estimates that these fee changes will affect approximately three to four hundred applications per year. Proposed (1)(d)(vii)(C) adds a new \$130 fee to review the qualifying criteria for storm water exceptions. The department estimates it will take one hour of reviewer time to verify that a project qualifies for the exception. Like the SSWIZ, this is a new procedure enacted by the Legislature, and the department is unable to estimate the number of persons affected by this change. Finally, proposed (1)(d)(viii) adds a fee to cover the costs to process the MEPA exemptions in NEW RULE II. The fee will be actual costs, calculated by multiplying the existing \$130 per hour review rate times the number of hours needed to review the exemption. Because of the limited number of sites to which that exemption will apply, the department estimates that this fee will affect very few applicants.

In addition, the department proposes to add the phrase "previously approved" to both individual and shared water and wastewater systems. Under SB 285, certain previously approved systems are exempt from further review if the systems meet certain criteria. This fee is commensurate with the review necessary to determine whether the exemption criteria have been satisfied. The department estimates that this review may apply to one to two hundred applications per year.

17.36.914 WASTEWATER TREATMENT SYSTEMS - TECHNICAL REQUIREMENTS (1) and (2) remain the same.

(3) Wastewater treatment systems must be located to maximize the vertical separation distance from the bottom of the absorption trench to the seasonally high ground water level, bedrock, or other limiting layer, but under no circumstances may

this vertical separation be less than four feet of natural soil. For elevated sand mounds constructed in accordance with Department Circular DEQ 4, the depth of the key may be included as part of the separation distance between the infiltrative surface and a limiting layer.

(4) through (7) remain the same.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: In the department's recent rulemaking in MAR Notice No. 17-421, the department modified ARM 17.36.320 to allow for reviews conducted under the Sanitation in Subdivisions Act, but did not modify the requirement in the state minimum standards for local health departments. The proposed change is substantively necessary for the reasons cited in MAR Notice No. 17-421 and is necessary here to ensure that there is no conflict between department rules and local health rules.

17.36.918 HORIZONTAL SETBACKS, FLOODPLAINS (1) Minimum horizontal setback distances (in feet) are as follows:

TABLE 1
SETBACK DISTANCES
(in feet)

From	To Sealed components (1) and other components (2)	To Absorption systems (3)
Public or multiple-user drinking water wells/springs	100	100
Individual and shared drinking water supply wells	50 (9)	100 (9)
Other wells (4)	50	100
Suction lines	50	100
Cisterns	25	50
Roadcuts, escarpments	10 (5)	25
Slopes > 35 percent (6)	10 (5)	25
Property boundaries (7)	10	10
Subsurface drains	10	10
Water mains (8)	10	10
Drainfields/sand mounds (3)	10	-

Foundation walls	10	10
Surface water, springs	50	100
Floodplains	--Sealed components - no setbacks (1) Other components - 100 (2)	100

Footnotes (1) through (8) remain the same.

(9) This setback applies unless the department has approved a smaller source specific well isolation zone under Circular DEQ-20, Standard 1.8. In that case, the source specific well isolation zone distance applies.

(2) through (5) remain the same.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: SB 327 directs the department to allow source-specific well isolation zones that are smaller than 100 feet. The proposed amendment adding Footnote (9) recognizes that a smaller source-specific well isolation zone may be approved by the department under DEQ-20, Standard 1.8, and that the appropriate setback will be that smaller distance, rather than the default 100 feet. The proposed amendment to ARM 17.36.918 is necessary to ensure that there is no conflict between the department's rules and the state minimum standards for local health departments.

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR PUBLIC SEWAGE SYSTEM (1) and (2) remain the same.

(3) As used in this rule, the following definitions apply in addition to those in 75-6-102, MCA:

(a) through (l) remain the same.

(m) "Professional engineer" means an engineer licensed or otherwise authorized to practice engineering in Montana pursuant to Title 37, chapter 67, MCA; and

(n) remains the same.

(o) "Development plan" has the meaning in [Section 1(9)(a), SB 237]; and

(p) "Rated capacity" has the meaning in [Section 1(9)(b), SB 237].

(4) A person may not commence or continue the construction, alteration, extension, or operation of a public water supply system or public sewage system until the applicant has submitted a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and has received written approval. Three sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or public sewage system consistent with the approved design report, plans, and specifications. Failure to construct or operate the system according to the approved plans and specifications or the department's

conditions of approval is an alteration for purposes of this rule. Design reports, plans, and specifications must meet the following criteria:

(a) through (c) remain the same.

(d) the ~~board~~ department adopts and incorporates by reference ARM 17.36.320 through 17.36.325. The design report, plans, and specifications for public subsurface sewage treatment systems must be prepared in accordance with ARM 17.36.320 through 17.36.325, and with the format and criteria set forth in Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems." For public subsurface sewage treatment systems with a design flow greater than or equal to 2500 gallons per day, the design report, plans, and specifications must be prepared by a professional engineer.

(e) the ~~board~~ department adopts and incorporates by reference ARM 17.36.319 for purposes of review of public gray water irrigation systems. The design report, plans, and specifications for public gray water irrigation systems must be prepared in accordance with ARM 17.36.319, and in accordance with the format and criteria set forth in Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems." For purposes of this chapter, "gray water" means wastewater that is collected separately from a sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.

(f) through (9) remain the same.

(10) Continuously active public water supply systems with a public water system ID number that have never submitted plans and specifications for department review are not required to submit plans and specifications unless specifically required by the department.

(a) All Community and non-transient, non-community public water supply systems that are inactive for three or more years must submit a design report, plans, and specifications, as required by (4) with the appropriate fees specified in this subchapter, for approval prior to reactivation. Previously approved systems that have been inactive for three or more years may, at the department's discretion, use the abbreviated review process described in (9)(a).

(b) Transient non-community public water supply systems that have been inactive for three or more years are not required to submit a design report, plans, and specifications to re-activate if:

(i) current water samples show the source is coliform-absent and nitrogen levels less than the maximum contaminant level;

(ii) no water system facility modifications have been made to the system during inactivation;

(iii) any significant deficiencies or sanitary defects previously identified have been corrected;

(iv) the water source is not under the influence of surface water; and

(v) the PWSID number is submitted to the department.

(11) through (19) remain the same.

(20) Fees for review and approval of development plans will be at the hourly rate provided for in ARM 17.38.106(3).

(21) The review timeframe for development plans is 60 calendar days.

~~(20)~~(22) For purposes of this chapter, the ~~board~~ 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) through (k) remain the same.

~~(24)~~(23) A copy of any of the documents adopted under ~~(20)~~(22) may be viewed at the Department of Environmental Quality, 1520 East Sixth Avenue, Helena, MT 59620-0901.

AUTH: 75-6-104, MCA

IMP: 75-6-104, 75-6-112, 75-6-121, MCA

REASON: The proposed amendments to (3)(o) and (p) and (21) and (22) implement SB 237 from the 2023 legislative session, which directed the department to allow municipalities to certify additional connections if they are operating under a department-approved development plan. Proposed (3)(o) and (3)(p) provide cross-reference to the statutory text for regulatory clarity and ease of use for the regulated community. SB 237 directed the department to set a fee that is commensurate with the costs of the department reviewing the development plans. The department does not yet have an accurate estimate of the time these reviews will take, so proposed (20) imposes a fee based on an hourly rate rather than a flat fee. Also, because this is a new procedure enacted by the 2023 Legislature, the department cannot estimate the number of persons who may be affected by this change. Proposed (23) provides the timeframe for development plan reviews will be the same as other public water and wastewater reviews, because they require the same level of effort.

The proposed changes to (4)(d) and (e) replace references to the Board of Environmental Review to the department. These housekeeping changes are necessary following SB 233 from the 2021 legislative session, which transferred rulemaking authority from the board to the department. The proposed text reflects the fact that, going forward, the department, not the board, will be responsible for adopting rules for public water and wastewater engineering requirements.

In (10), the department proposes to no longer require plan review of transient non-community systems that have been inactive for three or more years in certain circumstances. Sources of contamination for transient public water systems are limited to nitrogen and pathogens, both of which can be identified through water samples. Likewise, proposed (b)(i) through (iv) ensure that there is low risk of contamination if the system is reactivated. The requirement in (b)(iv) that any systems with a surface water source must be reviewed before reactivation is necessary because of the increased risk of contamination inherent to surface water sources. Proposed (b)(v) ensures that the department can correctly identify the system. The department does not propose to change the requirements for community and non-transient, non-community systems because the range of contaminants that could impact these systems is much larger and may not be adequately addressed by sampling, as well as required system redundancies.

17.38.102 DELEGATION OF REVIEW OF SMALL PUBLIC WATER AND SEWAGE SYSTEM PLANS AND SPECIFICATIONS (1) The department ~~may~~ shall delegate to divisions of local government the review of plans and specifications for:

- (a) remains the same.
- (b) extensions or alterations of existing public water and public sewage systems ~~that involve 50 or fewer connections.~~
- (2) remains the same.
- (3) Local governments shall be reimbursed 90% of the review fee for performing these reviews and the department must receive the remaining 10% of the review fee.
- (4) Local governments conducting reviews under this rule shall complete all documents necessary to complete the review and comply with:
 - (a) the Montana Environmental Policy Act provided in Title 75, chapter 1, parts 1 through 3, MCA;
 - (b) real property takings requirements in accordance with Title 70, MCA; and
 - (c) nondegradation and nonsignificance determinations required in accordance with Title 75, chapter 5, MCA.

AUTH: ~~75-6-103~~, 75-6-104, 75-6-121, MCA
IMP: 75-6-121

REASON: The proposed amendments to ARM 17.38.102 implement mandatory provisions required by HB 364 from the 2023 legislative session and are necessary to ensure that the rule does not conflict with the statute. The department chose to incorporate the statutory language in order to avoid any potential misunderstanding regarding statutory requirements.

5. The Circulars are proposed to be amended as follows, new matter underlined, deleted matter interlined:

Circular DEQ-4 General 1.1.1 General. These minimum standards apply to all subsurface wastewater treatment systems in Montana. In some cases, a reviewing authority (other than the Department of Environmental Quality) may have requirements that are more stringent than those set out in this Circular. Design details, as described in this Circular, are required for ~~all~~ multiple-user and public wastewater treatment systems and individual and shared systems with wastewater that exceeds residential strength. The information required for individual and shared wastewater treatment systems for residential strength waste is found in ARM 17.36.320(3).

The rest of section 1.1.1 remains the same.

REASON: SB 285 from the 2023 legislative session directed the department to no longer require design details for individual and shared systems in most circumstances, so long as the wastewater does not exceed residential strength. The amendment to 1.1.1 is necessary to ensure that the circular does not conflict with the mandatory statutory requirement.

Circular DEQ-4 Standard 2.2.1. General. Site modifications, as described in Sections 2.2.2, ~~2.2.3, and 2.2.4~~ of this Subchapter, may be used only for

replacement of failing systems. Site preparation for cut and fill modifications must be completed prior to final approval. Cut and fill systems must be designed to provide a minimum of 4 feet of natural soil separation to a limiting layer after the cut or fill has taken place. Cut or fill cannot be used to overcome a horizontal or vertical separation. Minor leveling, and cut and fill systems as described in Sections 2.2.3, 2.2.4, and 2.2.5 of this Subchapter, will be allowed for both new systems and replacement systems. All new and replacement subsurface wastewater treatment systems must meet the requirements of this Circular.

REASON: HB 592 from the 2023 legislative session directed the department to allow cut and fill systems to be used for new subsurface wastewater systems, rather than just for replacement systems. HB 592 also directed the department to prevent the use of cut or fill to overcome a horizontal or vertical separation. The proposed change to 2.2.1 implements these mandatory statutory directives by removing the requirement that cut systems in 2.2.3 and fill systems in 2.2.4 be used only for replacement systems, providing the mandatory statutory conditions on cut and fill, and making appropriate updates to the cross-references in the rule.

Circular DEQ-4 Standard 2.2.3. Cut Systems. ~~Cut systems may be used only for the replacement of failing systems and may not be used for new subsurface wastewater treatment systems.~~ Site modification for replacement subsurface wastewater treatment systems under this section must be completed prior to approval by the reviewing authority.

REASON: HB 592 directed the department to allow cut and fill systems to be used for new systems, rather than just for replacement systems. The proposed change removes the limitation on the use of cut systems to ensure that there is no conflict between the statute and associated design standard.

Circular DEQ-4 Standard 2.2.3.2. Design A. Cut areas for the ~~replacement~~ absorption system must be physically completed prior to approval. Two soil test holes must be excavated and detailed soil profile descriptions of the final receiving soils must be provided prior to excavation. ~~Percolation tests may be required after the cut has been complete.~~ All soil information must be submitted to the reviewing authority. Three percolation tests evenly spaced across the completed cut must be performed at the depth of the proposed infiltrative surface as a basis for the design application rate.

REASON: HB 592 directed the department to allow cut and fill systems to be used for new systems, rather than just for replacement systems. The proposed change removes the limitation to only replacement systems to ensure that there is no conflict between the statute and associated design standard. In addition, requiring three percolation tests across the cut horizon is necessary to ensure that the drainfield will be sized at the appropriate compacted application rate if the natural soil has been compacted during cutting. This proposed change matches the existing required percolation tests for fill systems.

Circular DEQ-4 Standard 2.2.4. Fill System. ~~Fill systems may be used only for replacement of existing failed systems and may not be used for new subsurface wastewater treatment systems.~~ The reviewing authority must initially approve the fill location with the site modification completed prior to final system approval. Fill areas for ~~replacement~~ absorption systems under this section must be physically completed prior to approval by the reviewing authority.

REASON: HB 592 directed the department to allow cut and fill systems to be used for new systems, rather than just for replacement systems. The proposed change removes the limitation on the use of fill systems, thus allowing for use of both new and replacement systems, to ensure that there is no conflict between the statute and associated design standard.

Circular DEQ-4 Standard 6.7.1. General. Elevated sand mounds may be used to achieve separation distance between the treatment system and a limiting layer. Four feet of natural soil must be maintained between the ~~modified site~~ ground surface and the limiting layer.

The rest of 6.7.1 remains the same.

REASON: In MAR Notice No. 17-421, the department modified ARM 17.36.320 to allow the sand mound key depth to count toward the separation distance. This change ensures there is no conflict between department rules, local health rules, and the design circular.

Circular DEQ-4 Standard 6.7.4.1 The ground surface where a mound is to be placed must be plowed, scarified, or keyed into the natural ground 4 inches to 8 inches parallel to the land contour. This must be achieved by removing a portion of the topsoil with the plow throwing the soil up slope to provide a proper interface between the fill and natural soils. When mounds are keyed in, the removed soil must be replaced with the same sand as required for the rest of the mound, and this sand will not count as part of the required 21 inches of sand in the mound as described in Subsection 6.7.3.4. A minimum of 4 feet of natural soil from the bottom of the ~~plowed surface, scarified surface, or key~~ ground surface to the limiting layer must be maintained.

REASON: In MAR Notice No. 17-421, the department modified ARM 17.36.320 to allow the sand mound key depth to count toward the separation distance. This change ensures there is no conflict between department rules, local health rules, and the design circular.

Circular DEQ-4 Drawing 6.7-1 This drawing will be modified to reflect that 4' of separation is required from the ground surface to the limiting layer. [track changes]

REASON: In MAR Notice No. 17-421, the department modified ARM 17.36.320 to allow the sand mound key depth to count toward the separation

distance. This change ensures there is no conflict between department rules, local health rules, and the design circular.

Circular DEQ-20, Standard 1.4.2.b Each existing and proposed drinking water well must be centered within a 100-foot radius well isolation zone or a smaller source specific isolation zone approved by the department.

REASON: SB 327 allows for source specific well isolation zones that are smaller than 100 feet, if the zone is approved by the department. This proposed change provides that a smaller source specific well isolation zone can be approved by the department. This change is proposed in accordance with new Standard 1.8, which outlines the requirements for such approval.

Circular DEQ-20, Standard 1.4.2.d The minimum setback distances set out in ARM 17.36.323 must be maintained for all new and existing water sources. A drinking water supply well may not be constructed within 100 feet of a drainfield or ground water mixing zone granted pursuant to ARM Title 17, chapter 30, subchapter 5-, unless a smaller source-specific well isolation zone is approved by the department.

REASON: SB 327 directed the department to allow source specific well isolation zones that are smaller than 100 feet. This statement provides that a smaller source-specific well isolation zone can be approved by the department in accordance with new DEQ-20, Standard 1.8, and ensures there is no conflict between statute and rule.

Circular DEQ-20, Standard 1.8 The Department may approve a source specific well isolation zone (SSWIZ) for existing individual wells that have well logs if the requirements of this standard are met. Wells that were constructed in violation of 76-4-121 or 76-4-130 are not eligible for a source specific well isolation zone request.

- a. A request for a source specific well isolation zone of less than 100 feet must be in writing and must be accompanied by information substantiating the request and by the applicable fee. To support the request, the applicant must submit the following:
 1. a driller's log of the well;
 2. total nitrogen and total coliform sample results from the well collected within the past 6 months;
 3. a lot layout or map showing the well location and potential sources of contamination within 200' of the well;
 4. the groundwater flow direction as determined by triangulation or published gradients;
 5. a virus attenuation analysis calculating the minimum horizontal distance needed to ensure the well is protected from sewage viruses;

6. any additional information the applicant believes would substantiate the request; and
 7. if the request requires a variance from the Board of Water Well Contractors, the approved variance must be submitted with the request.
- b. The applicant must demonstrate that the SSWIZ:
1. would be unlikely to cause pollution of state water in violation of 75-5-605, MCA;
 2. would protect the quality and potability of water for drinking water supplies and domestic uses and would protect the quality of water for other beneficial uses, including those uses specified in 76-4-101, MCA; and
 3. would not adversely affect public health, safety, and welfare.

REASON: SB 327 from the 2023 legislative session allows for source-specific well isolation zones (SSWIZ) that are less than 100 feet, if the zone is approved by the department. The prohibition against a SSWIZ for an illegal well is necessary to discourage evasions of the Sanitation in Subdivisions Act.

To justify the SSWIZ request, a driller's log is necessary to verify the subsurface conditions, depth, and grouting of the well, all of which are key components when determining whether to grant a SSWIZ. A recent total nitrogen and total coliform sample is necessary to determine whether the well meets water quality standards. A lot layout or map and triangulated or published gradient data is necessary to identify whether there are any surrounding sources of pollution that could negatively impact the well. A virus attenuation analysis is necessary to determine how far sewage viruses could travel at the site-specific location, which will impact the decision whether to grant a SSWIZ. The requirement that any required variance from the Board of Water Well Contractors be granted before applying to the department is necessary to ensure that the department does not approve source-specific isolation zones that conflict with another regulatory authority.

The criteria provided in (b) is necessary to ensure that the source specific well isolation zone would not threaten the environment or public health. The proposed criteria are the same as those currently used for evaluating deviation requests and are therefore familiar to applicants in their submittals and the department in its review.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Environmental Quality, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail DEQSubDivRuleUpdate@mt.gov, and must be received no later than 5:00 p.m., September 25, 2023.

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 at the address above, with ATTN: Shawn Rowland, or email at DEQSubDivRuleUpdate@mt.gov, 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 through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by mail on June 6, 2023.

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

/s/ Angela Colamaria
ANGELA COLAMARIA
Rule Reviewer

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

Certified to the Secretary of State August 15, 2023.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 17.8.202 pertaining to	)	AMENDMENT
incorporation by reference of the)	
most recent version of the Montana	)	NO PUBLIC HEARING
Ambient Air Monitoring Program	)	CONTEMPLATED
Quality Assurance Project Plan)	
(QAPP)	)	(AIR QUALITY)

TO: All Concerned Persons

1. On December 22, 2023, the Department of Environmental Quality proposes to amend the above-stated rule.

2. The Department of Environmental Quality 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 Environmental Quality no later than 5:00 p.m. on September 20, 2023, 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 DEQAQB.QAPP@mt.gov.

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

17.8.202 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the ~~board~~ department adopts and incorporates by reference the following:

(a) The Montana Ambient Air Monitoring Program Quality Assurance Project Plan (~~2017~~)(2023), a department manual that specifies ambient air sampling and data collection, recording, analysis, and transmittal requirements that pertain only to the department's monitoring program;

(b) through (2) remain the same.

AUTH: ~~75-2-111~~ 75-2-112, 75-2-203, MCA

IMP: 75-2-203, MCA

REASON: Following the 2021 Montana legislative session, the authority for adopting rules was changed from the Board of Environmental Review (board) to the Department of Environmental Quality (department).

A quality system for ambient air monitoring is the means by which an organization manages the quality of the monitoring information and data it produces in a systematic, organized manner. As a part of a quality system, the department

develops and uses the Montana Ambient Air Quality Monitoring Program Quality Assurance Project Plan (QAPP), which follows the regulations in 40 CFR Part 58, Appendix A. These regulations have these objectives: fulfilling foundational information needs associated with protecting Montana's air; providing quality data to the public; satisfying stakeholder expectations; complying with applicable statutes, societal concerns, and specifications for standards; and considering associated costs. This updated QAPP describes the quality assurance system that ensures the department's ambient air monitoring network is maintained in a prescribed manner that satisfies the objectives stated above. This work includes operation of each state or local government air monitoring station (SLAMS) that is used to help determine whether an area is in attainment or non-attainment status for a federal national ambient air quality standard (NAAQS).

Updates in the 2023 QAPP incorporate all applicable changes of federal regulations from 40 CFR Parts 50, 51, 52, 53, and 58. The changes since the 2017 version of the QAPP are identified below.

- a. Administrative updates to the QAPP include: new formatting that follows EPA guidelines for QAPP organization, all new figures are optimized for modern high-resolution PDF viewing, and updates to the department's organizational chart were incorporated to reflect current roles, responsibilities, programs, and sections.
- b. All methods, technical details, and equipment have been updated.
- c. Project data acquisition and storage methods have been updated.
- d. QAPP conforms with all current requirements defined in 40 CFR Parts 50, 51, 52, and 58.
- e. QAPP reflects current project quality objectives and criteria, quality assurance practices, and reporting requirements. Including considerations for non-regulatory, low-cost sensors now being incorporated into the ambient air monitoring network.
- f. All incorporated website addresses have been updated.
- g. All external references have been verified and updated.

The current version of the QAPP is located on the department's air quality monitoring website at <https://deq.mt.gov/air/Programs/monitoring>.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Environmental Quality, 1520 E 6th Avenue, P.O. Box 200901, Helena MT 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail DEQAQB.QAPP@mt.gov, and must be received no later than 5:00 p.m., on September 22, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the department at the above address no later than 5:00 p.m., September 22, 2023.

6. 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 80, based on the approximately 800 persons on the interested persons list for air quality matters that is maintained by the department. Because 25 persons is fewer than 80, the department will hold a hearing if it receives hearing requests from at least 25 persons.

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

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

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

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

/s/ Nicholas Whitaker
Nicholas Whitaker
Rule Reviewer

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

Certified to the Secretary of State August 15, 2023.

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, II, III, and IV pertaining to Tax) PROPOSED ADOPTION
on Electric Vehicle Charging Stations)

TO: All Concerned Persons

1. On September 15, 2023, at 10:00 a.m., the Department of Transportation (department) will hold an in-person public hearing, with the option to join via remote conferencing, to consider the proposed adoption of the above-stated rules.

Please use the following link to join by Zoom:

(a) <https://mt-gov.zoom.us/j/86368329380?pwd=RTNUbGZVcVdlQ3pLUXhGWllaSXRQGQT09>

Meeting ID: 863 6832 9380
Password: 667778

(b) Dial by Telephone: +1 646 558 8656

Meeting ID: 863 6832 9380
Password: 667778

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 accommodation, contact the department no later than 5:00 p.m. on September 6, 2023, to advise us of the nature of the accommodation that you need. Please contact Kendra Smith, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620; telephone (406) 444-0806; fax (406) 444-5411; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail kesmith@mt.gov.

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

NEW RULE I DEFINITIONS The following definitions apply in this chapter:

(1) "Charging station operator" means a person, firm, general partnership, limited partnership, limited liability partnership, corporation, limited liability company, or other lawfully recognized business entity that operates a public charging station, regardless of ownership.

(2) "Charging station owner" means the entity that is the public utility customer, or a public utility that owns a public charging station or public legacy charging station.

(3) "Electric meter" for purposes of [Ch. 619, L. 2023, Section 3] means an electric meter or sub meter installed or approved by the public utility exclusively

dedicated to the public charging station or public legacy charging station for the public utility's billing purposes for billing of electricity and or the kWh tax.

(4) "Metered system," "metering system," and "metering device" mean the charging station's internal embedded meter.

(5) "Rated capacity" means the charging station manufacturer's rated capacity.

AUTH: 15-70-104, MCA; [Ch. 619, L. 2023, Section 5]

IMP: [Ch. 619, L. 2023, Section 1]

REASON: The 2023 Legislature enacted Chapter 619, Laws of 2023 (House Bill 55), establishing a tax on electric vehicle charging stations. The bill became effective May 19, 2023. Proposed New Rule I is necessary to define words and phrases used throughout the proposed new rules for taxing electric vehicle charging stations.

NEW RULE II ELECTRIC METER AS POINT OF TAX COLLECTION

(1) For purposes of administering this chapter, the public utility will assess, collect, and remit the tax due to the department as measured by the kilowatt hours delivered through the electric meter.

AUTH: 15-70-104, MCA; [Ch. 619, L. 2023, Section 5]

IMP: [Ch. 619, L. 2023, Section 2]

REASON: Proposed New Rule II is necessary to define the point of tax collection as occurring at the electric meter installed or approved by the public utility.

NEW RULE III ELECTRIC METERING (1) For purposes of administering this chapter, the department will treat an electric meter serving a bank of charging stations as exclusively dedicated to the public charging station or public legacy charging station without regard for additional appurtenances that are served by the electric meter.

AUTH: 15-70-104, MCA; [Ch. 619, L. 2023, Section 5]

IMP: [Ch. 619, L. 2023, Section 3]

REASON: Proposed New Rule III is needed to clarify that one electric meter can serve a bank of charging stations to lessen the administrative burden on the charging station owners. This rule is necessary to establish that the department will not require charging station owners to install separate meters solely for the purpose of administering this tax.

NEW RULE IV QUARTERLY TAX RETURNS (1) Pursuant to [Ch. 619, L. 2023, Section 5], the public utility must file a quarterly tax report on forms prescribed by the department, showing the amount of kilowatt hours used during the calendar quarter and the calculation of tax owed on the amount of kilowatt hours used during the calendar quarter less an uncollectable tax resulting from the previous calendar quarter.

(2) Calendar quarters end on the last day of March, June, September, and December, and the quarterly tax reports and applicable tax payments are due on or before the last day of the month following the close of the calendar quarter.

(3) Once an initial tax report is submitted, quarterly tax reports must continue to be submitted regardless of kilowatt hour usage, until a closing report has been filed with the department.

AUTH: 15-70-104, MCA; [Ch. 619, L. 2023, Section 5]
IMP: [Ch. 619, L. 2023, Section 5]

REASON: Proposed New Rule IV is necessary to establish the dates the quarterly tax reports and tax payments must be filed with the department and to allow utilities to reduce tax payments due by the amount of bad debt that was reported on a previous return but not collected by those public utilities that use an accrual-based accounting method. Proposed New Rule IV is also necessary to clarify that once a public utility has filed an initial tax report, there is a continuing obligation to file a tax report every quarter until they notify the department that their reporting obligation has ended.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Kendra Smith, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620; telephone (406) 444-0806; fax (406) 444-5411; or e-mail kesmith@mt.gov, and must be received no later than 5:00 p.m., September 22, 2023.

5. A department designee has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 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 is available on the Department of Transportation website at www.mdt.mt.gov.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by email and U.S. mail on June 2, 2023.

9. The special notice requirements of 2-4-303, MCA, have been fulfilled. On August 15, 2023, written contact with Transportation Interim Committee staff members was made by email.

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

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

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Malcolm D. Long
Malcolm D. Long
Director
Department of Transportation

Certified to the Secretary of State August 15, 2023.

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

In the matter of the amendment of)
ARM 24.156.403, 24.156.405,)
24.156.813, 24.156.1622, and)
24.156.1623 and the repeal of ARM)
24.156.1621, 24.156.1624, and)
24.156.1701 pertaining to physician)
assistants)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On September 15, 2023, at 8:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/86910652552>
Meeting ID: 869 1065 2552, Passcode: 634780
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 869 1065 2552, Passcode: 634780

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 8, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. General Statement of Reasonable Necessity: The 2023 Legislature enacted House Bill (HB) 313, which allows for the independent practice of physician assistants (PA) upon reaching 8,000 hours of postgraduate clinical experience. The Board of Medical Examiners (board) is amending existing rules to implement the provisions of the bill. Specific statements will follow when needed.

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

24.156.403 DEFINITIONS AND ABBREVIATIONS (1) through (1)(e) remain the same.

(f) "Intern," "in post-graduate year 1" or "PGY-1" means a person who:

(i) and (ii) remain the same.

(iii) has passed USMLE Steps 1 and 2 or the AOA equivalent or holds a certificate from the ECFMG; and

(iv) remains the same.

(g) through (i) remain the same.

(j) "Postgraduate clinical experience" means the delivery of health care directly to patients, after licensure as a physician assistant, pursuant to a collaborative agreement with a physician or physician assistant.

(j) through (l) remain the same but are renumbered (k) through (m).

~~(m)~~(n) "Supervision" may be of the following types:

(i) remains the same.

~~(ii) "General supervision" means accepting responsibility for, and overseeing the medical services of, a physician assistant by telephone (voice or text), radio, video, or in person as frequently as necessary considering the location, nature of practice, and experience of the physician assistant;~~

(iii) remains the same but is renumbered (ii).

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

(2) remains the same.

AUTH: 37-1-131, 37-3-203, 37-3-301, 37-3-802, 37-13-201, 37-25-201, 50-6-203, MCA

IMP: 37-1-131, 37-3-102, 37-3-201, 37-3-203, 37-3-301, 37-3-305, 37-3-307, 37-3-325, 37-3-326, 37-3-802, 37-3-804, 37-13-201, 37-13-302, 37-25-201, 37-25-302, 50-6-101, 50-6-105, 50-6-201, 50-6-202, 50-6-203, 50-6-301, 50-6-302, MCA

REASON: The board is repealing "general supervision" as HB 313 eliminated the need for levels of supervision for physician assistants. The board is adding a definition for "postgraduate clinical experience" to assist physician assistants and physicians in determining when a physician assistant is qualified for independent practice.

24.156.405 UNPROFESSIONAL CONDUCT (1) remains the same.

(2) In addition, the following is unprofessional conduct:

(a) through (j) remain the same.

~~(k) for physician assistants, failure to submit to the board a completed supervision agreement prior to commencing practice in Montana with fewer than 8,000 hours of postgraduate clinical experience, practicing without a collaborative agreement meeting the requirements of 37-20-203, MCA;~~

(l) while under investigation or during a pending complaint, in Montana or elsewhere, but prior to a determination:

(i) remains the same.

~~(ii) voluntarily relinquishing or surrendering of professional or occupational license, certification, or registration, or privileges;~~

(m) remains the same.

~~(n) for physicians and physician assistants, failure to report to the board any loss of privileges within 30 days;~~

~~(o) when used, failure to maintain a collaborative practice agreement meeting the requirements of 37-20-203, MCA; or~~

(p) for emergency care providers, violation of facility patient care policy or procedure while providing services in a health care facility.

AUTH: 37-1-131, 37-1-319, 37-3-202, 37-6-106, 37-13-201, 37-25-201, 50-6-203, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-3-323, 37-3-401, 37-3-405, 37-6-311, 37-25-201, 50-6-203, MCA

REASON: Physician assistants (PA) are no longer required to practice under supervision if they have reached 8,000 hours of postgraduate clinical experience. Therefore, the board will no longer require the submission of supervision agreements and will not discipline PAs for failing to submit them. HB 313 requires a collaborative agreement for a PA who has not met the experience requirements. HB 313 further defines the requirements of a collaborative agreement, which does not require submission to the board unless requested for a specific purpose. The board is adding new (2)(o) to reflect the responsibility of both PAs and collaborating providers to maintain a collaborative practice agreement meeting the requirements of 37-20-203, MCA. The board is adding (2)(p) after staff recommendations to align with other health care professions.

24.156.813 PRACTICE REQUIREMENTS FOR PHYSICIANS AND PHYSICIAN ASSISTANTS USING TELEMEDICINE (1) and (2) remain the same.

(3) A ~~physician-patient~~ provider-patient relationship may be established for purposes of telemedicine:

(a) through (c) remain the same.

(4) The licensee using telemedicine in patient care may prescribe Schedule II drugs ~~to a patient only after first establishing a physician-patient relationship through an in-person encounter which includes a medical interview and physician examination~~ in compliance with Drug Enforcement Agency requirements and 37-20-404, MCA.

(5) The licensee using telemedicine in patient care shall:

(a) and (b) remain the same.

(c) establish a ~~physician-patient~~ provider-patient relationship prior to initiating care;

(d) obtain a medical history sufficient for diagnosis and treatment in keeping with the applicable standard of care prior to providing treatment, or issuing prescriptions, or delegating the patient's medical services to other health care providers;

(e) and (f) remain the same.

AUTH: 37-3-203, 37-3-301, MCA

IMP: 37-3-301, MCA

REASON: The board is updating this rule to implement changes needed to comply with HB 313, including that a PA may provide telemedicine. The board is further updating (4) to standardize with drug enforcement agency requirements and not impose a separate requirement on licensees.

24.156.1622 SUPERVISION OF PHYSICIAN ASSISTANT

COLLABORATION (1) A supervising physician may provide the following types of supervision to a physician assistant:

- (a) direct supervision;
- (b) onsite supervision; or
- (c) general supervision.

(2)(1) A physician or physician assistant who has never previously acted as a supervising physician collaborating provider in Montana, as defined by 37-20-401, MCA, must complete the board-approved online training for physician assistant supervision collaboration and a provide the certificate of completion must be submitted to the board office with the signed supervision agreement prior to the supervision agreement taking effect upon request.

(3) The supervising physician shall communicate with each supervised physician assistant a minimum of once a month for the purposes of discussion, education, and training, to include but not be limited to practice issues and patient care.

(4) A supervising physician may supervise more than one physician assistant if the supervising physician:

- (a) agrees to supervise more than one physician assistant by signing and filing multiple supervision agreements with the board;
- (b) provides appropriate and real time means of communication or back up supervision for the physician assistants;
- (c) determines the appropriate level of supervision identified in (1), based on the physician assistant's education, training, and experience; and
- (d) assumes professional and legal responsibility for all physician assistants under the supervising physician's supervision regardless of the varying types of supervision.

(5) The supervision agreement and duties and delegation agreement must assure the safety and quality of physician assistant services, considering the location, nature, and setting of the practice and the experience of the physician assistant, and shall provide for:

- (a) an appropriate type or combination of types of supervision identified in (1), including specific supervising physician response and availability times;
- (b) an appropriate scope of delegation of practice authority and appropriate limitations upon the practice authority of the physician assistant; and
- (c) appropriate frequency and duration of meetings.

(6) The supervision agreement and duties and delegation may provide for periodic changes in the type of supervision, scope of delegation, practice limitations, frequency, and duration of face-to-face meetings, and percentage of charts reviewed, based upon the duration and nature of experience gained by the physician assistant, the supervising physician's written assessment and evaluation of the physician assistant's experience and judgment, and other factors relevant to the nature and degree of supervision appropriate to assure the safety and quality of physician assistant services.

~~(7)(2)~~ The ~~duties and delegation~~ collaborative agreement must be available at the practice site at all times and must be submitted to the board or ~~its designee department~~ upon request.

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-1-131, 37-20-101, 37-20-301, 37-20-403, MCA

REASON: The board is amending this rule to reflect the new requirement of PAs entering into a collaborative agreement if they have not reached 8,000 hours of postgraduate clinical experience. HB 313 contains the requirements for a collaborative agreement. The board is therefore repealing requirements that are no longer required due to the specificity of HB 313.

24.156.1623 CHART REVIEW (1) ~~Chart review for a physician assistant having less than one year of full-time practice experience from the date of initial licensure in Montana must be 20 percent for the first six months of practice, and then may be reduced to 10 percent for the next six months, on a monthly basis, for each supervision agreement. Chart review for a physician assistant shall occur, with frequency and amount to be determined at the practice level and as described in the collaboration agreement.~~

~~(2) After twelve months, further chart review shall occur. The amount of chart review shall be at the discretion of the physician assistant and the supervising physician to determine in a duties and delegation agreement.~~

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-1-131, 37-20-101, 37-20-301, MCA

REASON: The board is updating this rule to reflect that chart review by a collaborating provider shall occur as specified in the collaborative agreement, allowing for flexibility in review as dictated by the PA's experience, practice level, and the discretion of the collaborating providers.

5. The rules proposed to be repealed are as follows:

24.156.1621 REPORTING TO THE BOARD

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-401, MCA

REASON: The board is repealing this rule as duplicative of the reporting requirements in ARM 24.156.405(2)(n) and statutory language in 37-3-401, MCA.

24.156.1624 PATIENT RIGHTS

AUTH: 37-20-202, MCA

IMP: 37-20-101, 37-20-301, MCA

REASON: The board is repealing this rule as unnecessary following the passage of HB 313. The board determined the rule was no longer applicable as there may not always be a collaborating provider on site for a patient to see, and that physician assistants maintain a duty to refer patients to another provider if requested.

24.156.1701 PHYSICIAN ASSISTANT PERFORMING RADIOLOGIC PROCEDURES – ROUTINE AND ADVANCED PROCEDURES

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-1-131, 37-20-101, 37-20-403, MCA

REASON: The board is repealing this rule as unnecessary. Physician assistants may not perform any procedures for which they are not qualified or trained, including radiologic procedures. As no other specific procedures or areas of specialty are in rule, it is unnecessary to keep this rule.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 22, 2023.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on May 1, 2023.

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

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

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

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

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

Certified to the Secretary of State August 15, 2023.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.156.401, 24.156.403,	)	PROPOSED AMENDMENT,
24.156.405, 24.156.409, 24.156.450,	)	ADOPTION, AND REPEAL
24.156.612, 24.156.613, 24.156.615,)	
24.156.617, 24.156.2711, and)	
24.156.2751, the adoption of New)	
Rule I, and the repeal of ARM)	
24.156.415, 24.156.604, 24.156.608,)	
24.156.609, 24.156.616, 24.156.628,)	
24.156.801, and 24.156.2715)	
pertaining to the Board of Medical)	
Examiners general revisions)	

TO: All Concerned Persons

1. On September 15, 2023, at 10:30 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/82827831157>
Meeting ID: 828 2783 1157, Passcode: 244863
- OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 828 2783 1157, Passcode: 244863

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 8, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Consistent with the Red Tape Relief initiative as well as its ongoing obligation to review its own rules, the Board of Medical Examiners (board) undertakes this rulemaking to simplify, shorten, and clarify its own rules for improved usability by the public. Some changes proposed additionally remove citations to acupuncturists, since that license type was moved to the Alternative Health Care Board pursuant to Senate Bill (SB) 453.

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

24.156.401 MEDICAL ASSISTANT – DELEGATION AND SUPERVISION

(1) through (4)(b) remain the same.

(c) surgery as defined in ARM ~~24.156.504~~ 24.156.403;

(d) through (e) remain the same.

AUTH: 37-3-104, 37-3-203, MCA

IMP: 37-3-102, 37-3-104, MCA

REASON: Reasonable necessity exists to amend (4)(c) to correct a cross reference to the appropriate rule.

24.156.403 DEFINITIONS AND ABBREVIATIONS (1) and (2) remain the same.

AUTH: 37-1-131, 37-3-203, 37-3-301, 37-3-802, ~~37-13-201~~, 37-25-201, 50-6-203, MCA

IMP: 37-1-131, 37-3-102, 37-3-201, 37-3-203, 37-3-301, 37-3-305, 37-3-307, 37-3-325, 37-3-326, 37-3-802, 37-3-804, ~~37-13-201, 37-13-302~~, 37-25-201, 37-25-302, 50-6-101, 50-6-105, 50-6-201, 50-6-202, 50-6-203, 50-6-301, 50-6-302, MCA

REASON: Reasonable necessity exists to amend the authorizing and implementation citations due to passage of SB 453 (2023), which transfers acupuncture from this board to the Alternative Health Care Board.

24.156.405 UNPROFESSIONAL CONDUCT (1) remains the same.

(2) In addition, the following is unprofessional conduct:

(a) through (l) remain the same.

(m) engaging in practice under a license issued by the board as the partner, agent, or employee of, or in joint venture with, a person who does not hold an equivalent license for practice. However, this rule does not prohibit:

(i) remains the same.

(ii) practicing medicine as the partner, agent, or employee of, or in joint venture with, ~~a hospital, medical assistance facility,~~ a licensed health care facility or other licensed health care provider; however:

(A) through (C) remain the same.

(n) for physicians and physician assistants, involuntary loss of or failure to report to the board any involuntary loss of privileges within 30 days.

AUTH: 37-1-131, 37-1-319, 37-3-202, 37-6-106, ~~37-13-201~~, 37-25-201, 50-6-203, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-3-323, 37-3-401, 37-3-405, 37-6-311, 37-25-201, 50-6-203, MCA

REASON: Reasonable necessity exists to amend (2)(n) to clarify that the loss of privileges is unprofessional conduct. Reasonable necessity exists to amend the

authorizing and implementation citations due to passage of SB 453 (2023), which transfers acupuncture from this board to the Alternative Health Care Board.

24.156.409 FEE SCHEDULE (1) Initial and active license renewal application fees:

- (a) through (f) remain the same
- ~~(g) Acupuncturist~~ 75
- (h) through (m) remain the same.
- (2) License Inactive status license renewal application fees:
 - ~~(a) Physician (active status)~~ 375
 - ~~(b)(a) Physician (inactive status)~~ 190
 - ~~(c) Resident~~ 75
 - ~~(d) Podiatrist (active status)~~ 375
 - ~~(e)(b) Podiatrist (inactive status)~~ 190
 - ~~(f) Nutritionist~~ 75
 - ~~(g) Acupuncturist~~ 75
 - ~~(h) Physician assistant (active)~~ 190
 - ~~(i)(c) Physician assistant (inactive)~~ 115
 - ~~(j) Emergency medical responder~~ 20
 - ~~(k) Emergency medical technician~~ 35
 - ~~(l) Advanced emergency medical technician~~ 55
 - ~~(m) Paramedic~~ 75
- (3) through (6) remain the same.

AUTH: 37-1-134, 37-3-203, 37-3-307, 37-3-308, 37-3-356, 37-3-802, 37-3-804, 37-6-106, ~~37-13-201~~, 37-20-202, 37-25-201, 50-6-203, MCA

IMP: 37-1-134, 37-1-141, 37-3-305, 37-3-307, 37-3-308, 37-3-309, 37-3-313, 37-3-356, 37-3-804, 37-6-302, ~~37-13-302~~, ~~37-13-304~~, 37-20-302, 37-25-302, 50-6-203, MCA

REASON: Reasonable necessity exists to amend the authorizing and implementation citations due to passage of SB 453 (2023), which transfers acupuncture from this board to the Alternative Health Care Board. Reasonable necessity exists to amend the renewal rule to reflect that fees for initial application and renewals are the same for licenses in active status. As a result, fees need not be duplicated.

24.156.450 MANAGEMENT OF INFECTIOUS WASTES (1) and (2) remain the same.

AUTH: 37-1-131, 37-3-203, 37-6-106, ~~37-13-201~~, 37-25-201, 50-6-203 75-10-1006, MCA

IMP: 37-1-131, 50-6-203, 75-10-1006, MCA

REASON: Reasonable necessity exists to amend the authorizing and implementation citations due to passage of SB 453 (2023), which transfers acupuncture from this board to the Alternative Health Care Board.

24.156.612 APPLICATION FOR TEMPORARY NON-DISCIPLINARY PHYSICIAN LICENSE (1) through (1)(b) remain the same.

(c) pay the physician license application fee as prescribed in ARM ~~24.156.604~~ 24.156.409; and

(d) remains the same.

AUTH: 37-3-203, 37-3-301, 37-3-305, MCA

IMP: 37-3-301, 37-3-305, MCA

REASON: Reasonable necessity exists to amend this rule to correct the incorrect citation to the fee rule.

24.156.613 APPLICATION FOR PHYSICIAN LICENSURE IN ANOTHER STATE VIA INTERSTATE COMPACT (1) and (1)(a) remain the same.

(b) pay an application fee for licensure in another state via interstate compact per ARM ~~24.156.604~~ 24.156.409; and

(c) through (2) remain the same.

AUTH: 37-3-203, MCA

IMP: 37-3-356, MCA

REASON: Reasonable necessity exists to amend this rule to correct the incorrect citation to the fee rule.

24.156.615 RENEWALS (1) and (2) remain the same.

(3) A physician with an active license who is not actively engaged in the clinical practice of medicine in this state, or who is absent from this state for a period of one or more years, may renew as an inactive licensee and pay the inactive fee listed in ARM ~~24.156.604~~ 24.156.409.

(a) through (4) remain the same.

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

IMP: 37-1-131, 37-1-134, 37-1-141, 37-1-319, MCA

REASON: Reasonable necessity exists to amend this rule to correct the incorrect citation to the fee rule.

24.156.617 LICENSE CATEGORIES (1) through (5) remain the same.

AUTH: 37-1-131, 37-1-319, 37-3-203, 37-3-802, 37-3-804, MCA

IMP: 37-1-131, 37-1-141, 37-1-319, ~~37-3-304~~, 37-3-305, 37-3-802, 37-3-804, MCA

REASON: Reasonable necessity exists to remove 37-3-304, MCA from the implementation statutes because the statute was repealed in 2015.

24.156.2711 ECP LICENSURE QUALIFICATIONS (1) The board shall license an applicant as an ECP at the appropriate licensure level if the applicant:

(a) has successfully completed an ECP course of instruction at or above the level of requested licensure; and

(b) possesses a current active or inactive NREMT certification equal to or greater than the level applied for or provides a current unrestricted substantially equivalent ECP license or certification in another state which has a complaint process.;

~~(c) has obtained a high school diploma or equivalency; and~~

~~(d) is 18 years of age or older.~~

(2) remains the same.

AUTH: 37-1-131, 50-6-203, MCA

IMP: 37-1-304, 50-6-203, MCA

REASON: The board has received public comment requesting that the board eliminate its age minimum and high school diploma requirement to align with the National Registry of Emergency Medical Technicians (NREMT) qualifications. NREMT is the certifying body the board recognizes for ECP licensure, and it removed age restrictions in June 2020. A high school diploma is not a requirement for NREMT certification. Commenters state that there has been an increase in the number of colleges and fire departments offering ECP classes to high school seniors and juniors, and that the board's age and diploma requirement prevent them from helping to staff ambulance services.

24.156.2751 LEVELS OF ECP LICENSURE INCLUDING ENDORSEMENTS

(1) The board issues four levels of licenses for ECPs. Each level has endorsements that may be added to an ECP license. Endorsements do not have to be acquired in the order listed below and may consist of one or more combinations within each ECP level. The levels of licensure and endorsements are as follows:

(a) EMR licenses:

(i) remains the same.

~~(ii) naloxone;~~

(iii) and (iv) remain the same but are renumbered (ii) and (iii).

(b) EMT licenses:

(i) through (iv) remain the same.

~~(v) naloxone;~~

(vi) and (vii) remain the same but are renumbered (v) and (vi).

(c) AEMT licenses:

(i) remains the same.

~~(ii) AEMT-99;~~

(iii) and (iv) remain the same but are renumbered (ii) and (iii).

(d) remains the same.

AUTH: 37-3-203, 50-6-203, MCA

IMP: 37-3-102, 37-3-203, 50-6-101, 50-6-105, 50-6-201, 50-6-202, 50-6-203, 50-6-301, 50-6-302, MCA

REASON: Reasonable necessity exists to strike naloxone from the rule because naloxone is now an over the counter medication. As a result, special authorization is not necessary for its administration. Reasonable necessity exists to strike AEMT-99 from the rule because it is no longer issued.

5. The proposed new rule is as follows:

NEW RULE I ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) through (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA

IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

6. The rules proposed to be repealed are as follows:

24.156.415 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: Reasonable necessity exists to repeal this rule, effective October 1, 2023, at the earliest, due to House Bill (HB) 583 (2023). That legislation amends 37-1-145, MCA, and eliminates the requirement for adoption by the board of a specific military training rule, setting forth specific obligations for the board to accept military experience for granting licensure. As such, the need for this rule is obsolete.

24.156.604 REFUSAL OF LICENSE

AUTH: 37-3-203, MCA
IMP: 37-3-321, MCA

REASON: Reasonable necessity exists to repeal this rule because it is duplicative. Section 37-3-321, MCA sets forth the authority of the board to deny a license. This is statutorily duplicated at 37-1-137, MCA. Moreover, 37-1-137, MCA specifies the applicability of the Montana Administrative Procedure Act (MAPA) to license denials. MAPA's applicability sets forth specific administrative procedures for contesting a licensing decision, rendering this rule unnecessary.

24.156.608 ECFMG REQUIREMENTS

AUTH: 37-3-203, MCA
IMP: 37-3-305, 37-3-306, 37-3-307, 37-3-311, MCA

REASON: Reasonable necessity exists to repeal this rule because it is out of date based on statutory changes made in 2015. Amendments made at that time incorporated Canadian medical schools as permissible into 37-3-305, MCA, as well as passage of the ECFMG examination.

24.156.609 FIFTH PATHWAY PROGRAM

AUTH: 37-3-203, MCA
IMP: 37-3-102, 37-3-306, 37-3-307, 37-3-309, MCA

REASON: Reasonable necessity exists to repeal this rule because the Fifth Pathway Program was eliminated a number of years ago. See <https://www.ecfm.org/news/2010/05/04/important-announcement-regarding-fifth-pathway-certificates-and-usmle-step-3/>.

24.156.616 REGISTRY

AUTH: 37-3-203, 37-3-802, MCA
IMP: 37-3-205, MCA

REASON: Reasonable necessity exists to repeal this rule because it unnecessarily codifies business operations. Moreover, it is duplicative of the statute it purports to implement. Duplication of statute in rule is impermissible.

24.156.628 MANAGEMENT OF INFECTIOUS WASTES

AUTH: 37-1-131, 37-3-203, 75-10-1006, MCA
IMP: 37-1-131, 75-10-1006, MCA

REASON: Reasonable necessity exists to repeal this rule because it is proposed to be consolidated into ARM 24.156.450 so that the board has only one infectious waste rule applicable to all license types.

24.156.801 PURPOSE AND AUTHORITY

AUTH: 37-3-203, 37-3-301, MCA

IMP: 37-3-102, 37-3-301, MCA

REASON: Reasonable necessity exists to repeal this rule because it provides no substance.

24.156.2715 SUBSTANTIALLY EQUIVALENT EDUCATION

AUTH: 37-1-131, 50-6-203, MCA

IMP: 37-1-131, 37-1-304, 37-3-203, 50-6-203, MCA

REASON: Reasonable necessity exists to repeal this rule because it does not provide a substantive definition of "substantially equivalent" which is distinct from the definition set forth in statute at 37-1-304, MCA. As such, the rule is unnecessary. It is proposed to be repealed in favor of simplification and shortening of the administrative rules.

7. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 22, 2023.

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

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

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

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

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

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

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

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

Certified to the Secretary of State August 15, 2023.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.156.630 and 24.156.635 and) PROPOSED AMENDMENT AND
the repeal of ARM 24.156.632,) REPEAL
24.156.633, 24.156.634, 24.156.636,)
and 24.156.637 pertaining to Montana)
Health Corps)

TO: All Concerned Persons

1. On September 15, 2023, at 2:00 p.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/81634299207>
Meeting ID: 816 3429 9207, Passcode: 704073
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 816 3429 9207, Passcode: 704073

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 8, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: In 2023, the Legislature passed Senate Bill (SB) 564, which modernized and expanded the Montana Health Corps Act. Changes from the bill primarily expanded the range of individuals who may perform services under the act as physicians as well as the individuals who could receive services from Health Corps physicians. These rule amendments are reasonably necessary to carry out the purposes of this legislation. In addition, these changes further the Red Tape Relief initiative by reducing, simplifying, and clarifying the number of administrative rules.

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

24.156.630 APPLICATION FOR PARTICIPATION IN HEALTH CORPS

(1) An applicant who holds an active license to practice medicine in the State of Montana and who wants to participate in the health corps program shall:

- (a) complete and return a registration form approved by the board, together with accompanying documentation; and
- (b) submit a registration fee, pursuant to ARM 24.156.631; and
- ~~(c) satisfy all of the requirements set forth in 37-3-804, MCA.~~
- ~~(2) An applicant who does not hold an active license to practice medicine in the State of Montana and wants to participate in the health corps program must submit an application for an active license, in addition to fulfilling the requirements listed above.~~

AUTH: 37-1-131, 37-3-203, 37-3-802, 37-3-804, MCA

IMP: 37-1-131, 37-3-802, 37-3-804, MCA

REASON: There is reasonable necessity to strike the cross-reference in (1)(b) because it is incorrect and unnecessary to state, given all fees are in a unified rule. It is necessary to strike (1)(c) because it is not necessary to state in rule that a statute must be followed. It is necessary to strike (2) because it is not necessary to state that a physician must be licensed in Montana to practice in rule, because it is clear in statute.

24.156.635 SCOPE OF PRACTICE OF HEALTH CORPS PARTICIPANTS

- (1) A ~~retired~~ physician who holds an active license to practice medicine in Montana and who is registered with the board as a health corps physician may, as a health corps volunteer, may
 - ~~(a) practice medicine within the scope of their training and experience by providing primary outpatient care through home healthcare visits to eligible patients individuals.; and~~
 - ~~(b) engage in a limited scope of practice under a limitation of liability imposed by 37-3-806, MCA.~~
- ~~(2) Health corps physicians must report to the board in writing within 90 days, any denial of hospital privileges, restrictions or limitations of practice, or the initiation of any disciplinary action against the certificate or license to practice medicine by any state or territory, in which the licensee is licensed.~~
- ~~(3) Health corps physicians shall follow the participation guidelines as set forth by the board. Failure to follow participation guidelines may be grounds for discipline.~~
- ~~(4)(2) Health corps physicians shall provide a written disclosure on the limitation on legal liability to patients referred to in of the health corps program.~~
- ~~(5) Health corps physicians are subject to each of the grounds for disciplinary action as provided in 37-1-316, MCA, and ARM 24.156.625, in accordance with the procedures set forth in Title 37, chapters 1 and 3, MCA, and the Montana Administrative Procedure Act.~~
- ~~(6) Health corps physicians shall comply with all laws, rules, and regulations governing the maintenance of patient medical records, including patient confidentiality requirements.~~
- ~~(7) Health corps physicians shall notify the board of any change in the licensee's address, as contained on the participation registration, within 30 days of such change.~~

~~(8) Health corps physicians shall cooperate in the investigation of any possible grounds for discipline, including revocation or limitation of the license or participation registration, by timely compliance with all inquiries and subpoenas issued by the board for evidence or information. The licensee shall provide, within 21 days of receipt of a written request from the board, clear and legible copies of requested documents, including medical records, which may be related to possible grounds for discipline, including revocation or limitation of a license or participation registration. Failure to timely comply with a board inquiry or subpoena or to provide clear and legible copies of requested records shall be grounds for discipline.~~

AUTH: 37-1-131, 37-3-203, 37-3-802, 37-3-804, MCA

IMP: 37-1-131, 37-3-310, 37-3-802, 37-3-804, 37-3-806, MCA

REASON: Reasonable necessity exists to strike (2) because the subject is addressed in the unprofessional conduct rule. Reasonable necessity exists to strike (3) because it is unnecessary to state in this rule that the law must be followed. To the extent such statement might be necessary, it is set forth at ARM 24.156.405(1). Reasonable necessity exists to strike (5) because it is not necessary to state that a health corps physician may be disciplined for the same bases as discipline of any other licensee. Reasonable necessity exists to strike (6) because it is duplicative of unprofessional conduct requirements applicable to all physician licensees, as set forth in statute and rule. Reasonable necessity exists to strike (7) because it duplicates 37-1-309, MCA, which requires notifications of change of address. Reasonable necessity exists to strike (8) because it is duplicative of requirements to comply with investigations of the board set forth in ARM 24.156.405(2)(a). Reasonable necessity exists to amend the implementation statutes to include 37-3-806, MCA, to specify that (4), pertaining to written disclosure of liability limitations, is an implementation of that statute.

5. The rules proposed to be repealed are as follows:

24.156.632 FAILURE TO COMPLETE APPLICATION AND REGISTRATION

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-309, 37-3-802, 37-3-804, MCA

REASON: There is reasonable necessity to repeal this rule because it is a business process which need not be restated in rule.

24.156.633 HEALTH CORP PARTICIPATION REGISTRATION

AUTH: 37-1-131, 37-3-203, 37-3-802, MCA

IMP: 37-1-131, 37-3-802, 37-3-804, MCA

REASON: There is reasonable necessity to repeal this rule because it is not necessary to restate general licensing requirements for this program of licensure.

24.156.634 RENEWALS

AUTH: 37-1-131, 37-3-203, 37-3-802, 37-3-804, MCA

IMP: 37-1-131, 37-1-141, 37-3-802, 37-3-804, MCA

REASON: There is reasonable necessity to repeal this rule because it is duplicative of the renewal requirements set forth in ARM 24.156.615.

24.156.636 SANCTIONS

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-325, 37-3-807, MCA

REASON: There is reasonable necessity to repeal this rule because a physician may be disciplined pursuant to normal processes without the need for this rule.

24.156.637 REFERRALS TO HEALTH CORPS

AUTH: 37-1-131, 37-3-203, 37-3-802, 37-3-804, 37-3-805, MCA

IMP: 37-3-802, 37-3-805, MCA

REASON: Reasonable necessity exists to repeal this rule because the statutory basis for restricted referrals was repealed by SB 564, Section 6 (2023).

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 22, 2023.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by electronic mail on May 1, 2023.

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

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

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

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

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

Certified to the Secretary of State August 15, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through V pertaining to) PROPOSED ADOPTION
pediatric complex care assistant)
license)

TO: All Concerned Persons

1. On September 15, 2023, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed 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/ 88256138730](https://mt-gov.zoom.us/j/88256138730)
Meeting ID: 882 5613 8730, Passcode: 646357
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 882 5613 8730, Passcode: 646357

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 8, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2023 Legislature established licensure for the pediatric complex care assistant (PCCA). This new license type recognizes individuals providing care for individuals under the age of 21 who are under the care of the licensee. There is reasonable necessity to engage in rulemaking to define the initial parameters of licensure for this license type.

4. The proposed new rules are as follows:

NEW RULE I DEFINITIONS (1) "Certified" refers to documentation accepted by the department setting forth completed training of a licensee or license applicant by an approved provider.

AUTH: [House Bill 449, Section 1], [House Bill 449, Section 2]
IMP: [House Bill 449, Section 1], [House Bill 449, Section 2]

REASON: New Rule I establishes a definition for "certified," used in this context to specify the recognition of training for licensees and license applications.

NEW RULE II TRAINING PROGRAM (1) The department approves training of a licensee or license applicant by:

(a) the primary care provider of the individual for whom the licensee will provide care; or

(b) a training provider specially equipped to provide training for pediatric complex care, in which case the training provider must register with the department.

(2) Training must be certified by the training provider and identify, on a form provided by the department, what services the licensee or license applicant has been trained to provide.

(3) A licensee may receive additional training from a training provider to increase the scope of care they are permitted to provide. The licensee may only perform services for which training has been certified.

AUTH: [House Bill 449, Section 1], [House Bill 449, Section 2]

IMP: [House Bill 449, Section 1], [House Bill 449, Section 2]

REASON: Pursuant to House Bill (HB) 449, Section 1, licensee training must be approved by the department. New Rule II similarly defines the types of training programs which the department approved. Most simply, the department recognizes that training may be provided by the primary care provider of the individual for whom the licensee will care. If that provider does not provide training, other vendors may also be approved by the department.

NEW RULE III PEDIATRIC COMPLEX CARE SERVICES (1) In addition to those services defined in [House Bill 449, Section 1], a licensee may perform:

(a) bowel care, including enema administration and ostomy care;

(b) wound care;

(c) central line care or IV fluid administration; and

(d) airway management, including oxygen management.

AUTH: [House Bill 449, Section 1], [House Bill 449, Section 2]

IMP: [House Bill 449, Section 1], [House Bill 449, Section 2]

REASON: Pursuant to its authority to define scope of practice for pediatric complex care licensees, the department recognizes these services as within the scope of services which may be performed. As set forth in New Rule II, these services may only be performed based on training received and certification provided to the department.

NEW RULE IV FEES (1) Initial and renewal application fees are \$25.

AUTH: [House Bill 449, Section 2]

IMP: [House Bill 449, Section 2]

REASON: There is reasonable necessity to adopt a fee for license applications and renewals for this license type. The department, in communication with stakeholders, is not yet able to determine the number of individuals likely to seek licensure of this

type. A likely estimate is 25. As such, this fee is estimated to generate approximately \$625.

NEW RULE V UNPROFESSIONAL CONDUCT (1) It is unprofessional conduct for a licensee or applicant to violate any statute, rule, or standard of care governing their scope of practice, or exceeding the scope of practice for which they are licensed, trained, and educated to perform. The following additionally constitutes unprofessional conduct by licensees or license applicants:

- (a) failing to cooperate with an investigation by or request for information from the department;
- (b) performing services not trained and certified following [NEW RULE II].

AUTH: [House Bill 449, Section 1], [House Bill 449, Section 2]

IMP: [House Bill 449, Section 1], [House Bill 449, Section 2]

REASON: Reasonable necessity exists to set forth unprofessional conduct rules to recognize instances in which the licensee of a PCCA may be disciplined.

5. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 22, 2023.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on May 3, 2023.

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

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

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

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

Certified to the Secretary of State August 15, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.182.301, 24.182.401,	)	PROPOSED AMENDMENT AND
24.182.403, 24.182.405, 24.182.407,	)	REPEAL
24.182.420, 24.182.501, 24.182.505,)	
24.182.507, 24.182.512, 24.182.514,)	
24.182.516, 24.182.518, 24.182.520,)	
24.182.525, 24.182.801, 24.182.804,)	
24.182.807, 24.182.810, and)	
24.182.2301 and the repeal of ARM)	
24.182.101, 24.182.201, 24.182.202,)	
24.182.421, 24.182.504, 24.182.508,)	
24.182.509, 24.182.510, 24.182.511,)	
24.182.513, 24.182.519, 24.182.523,)	
24.182.813, 24.182.2101,)	
24.182.2103, 24.182.2105, and)	
24.182.2108 pertaining to the Board of)	
Private Security)	

TO: All Concerned Persons

1. On September 14, 2023, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/81402359840>
Meeting ID: 814 0235 9840, Passcode: 203832
- OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 814 0235 9840, Passcode: 203832

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 7, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: This proposal notice implements Chapter 481, L. 2023 (Senate Bill (SB) 454), which changed the regulatory governing model of Private Security from a board to a department program; repealed branch office, resident manager, and alarm response runner license types; merged contract security companies and proprietary security organizations into a single license type; and narrowed the required licensure of

certified firearms instructors to instructing in the private security field only, rather than all firearms instructing. Other rule amendments reorganize information and apply consistent and simple word choice and parallel construction to make the rules easier to read and understand.

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

24.182.301 DEFINITIONS ~~(1) "Direct supervision" regarding private investigator trainees and temporary practice permit holders means daily contact between supervisor and trainee or temporary practice permit holder while engaged in the performance of licensed duties, including one in person, face to face meeting per week.~~

~~(2) "Dishonorable discharge" means any military discharge specifically stating it is a dishonorable discharge.~~

~~(3)~~(1) "POST" means the Montana Public Safety Officer Standards and Training Council.

(2) "Provisional permit" means the "probationary identification card" used in 37-60-202, MCA, and may also be referred to as a "training permit."

~~(4)~~ remains the same but is renumbered ~~(3)~~.

~~(5)~~~~(4)~~ "Weapon" as used in 37-60-405, MCA, means a firearm TASER devices, OC (pepper) sprays manufactured for security industry use, and collapsible batons, each of which security personnel receive training before using on duty. The term does not include firearms.

AUTH: 37-60-202, MCA

IMP: ~~37-60-101~~, 37-60-105, 37-60-202, 37-60-303, 37-60-405, MCA

REASON: In former (1), SB 454 repealed the term "direct supervision" when it repealed resident managers and as it relates to private investigator trainees, is now described in ARM 24.182.804, so is not necessary to define in this rule. In former (2), it is not necessary to define the term "dishonorably discharged" because SB 454 struck that term.

In new (2), it is necessary to define "provisional permit" to include the "probationary identification card" referenced in the statute because "provisional permit" is the term staff uses internally and, in the database, to describe authority to practice under supervision while awaiting completion of training or education. See also ARM 24.182.507.

In new (4), the definition of "weapon" to mean only firearms conflicts with statutes that clearly regulate both firearms and non-firearm weapons used in private security. The legislature defined "armed" to mean with "firearms" in 37-60-101, MCA, but used the broader term, "weapons," in 37-60-405, MCA, to describe the duty to regulate "weapons to be carried by *armed licensees or ... private security personnel or private investigators...*" The department's regulation of non-firearm weapons typical to the security industry is reasonable and necessary in the context of private security and is dictated by the plain language of the statute.

24.182.401 FEE SCHEDULE (1) License application fees are as follows:

~~(a) Contract security companies, proprietary security organizations, and electronic security companies:~~

- ~~(i) Company Private security firm or electronic security firm \$250~~
- ~~(ii) Resident manager 175~~
- ~~(iii)(b) Security guard, or security alarm installer, or alarm response runner 100~~
- ~~(iv) Branch office 400~~
- ~~(b) through (d) remain the same but are renumbered (c) through (e).~~
- ~~(e)(f) Certified Private security firearms instructor 150~~
- ~~(f)(g) Armed endorsement for security guard and private investigator 50~~

~~(2) License renewal fees are as follows:~~

~~(a) Contract security companies, proprietary security organizations, and security companies:~~

- ~~(i) Company Private security firm or electronic security firm 200~~
- ~~(ii) Resident manager 125~~
- ~~(iii)(b) Security guard, or security alarm installer, or alarm response runner 100~~
- ~~(iv) Branch office 400~~
- ~~(b) and (c) remain the same but are renumbered (c) and (d).~~
- ~~(d)(e) Process Registered process server 100~~
- ~~(e)(f) Certified Private security firearms instructor 125~~
- ~~(f)(g) Armed endorsement for security guard and private investigator 50~~

~~(3) Inactive license renewal fees are as follows:~~

~~(a) Contract security companies, proprietary security organizations, and electronic security companies:~~

- ~~(i) Company 100~~
- ~~(ii) Resident manager 62.50~~
- ~~(iii) Security guard, alarm installer, or alarm response runner 50~~
- ~~(iv) Branch office 50~~
- ~~(b) Private investigator 87.50~~
- ~~(c) Private investigator trainee 50~~
- ~~(d) Process server 50~~
- ~~(e) Certified firearms instructor 62.50~~

~~(4) Miscellaneous fees are as follows:~~

- ~~(a) Photo ID card (replacement) 20~~
- ~~(b) Temporary practice permit 25~~
- ~~(c) Changes of employer or name 20~~

~~(5)(3) Examination fees are as follows:~~

- ~~(a) Process Registered process server 25~~
- ~~(b) All other exams Private investigator 20~~

~~(6) Fees for applicant fingerprint checks are set by the FBI and Montana Department of Justice, and are subject to change. Current fee amounts for fingerprint checks are available at the Montana Department of Justice.~~

~~(7) Additional standardized fees are specified in ARM 24.101.403.~~

~~(8) Fees are deemed earned by the board upon receipt and all fees are nonrefundable.~~

AUTH: 37-1-134, 37-60-202, MCA

IMP: 25-1-1104, 37-1-134, 37-1-141, 37-60-202, 37-60-304, MCA

REASON: Changes are necessary to reflect repeal by SB 454 of branch office, resident manager, and alarm response runner licenses; new terminology for process servers and firearms instructors; and merging contract and proprietary security company terminology into a single license type of "private security firm." SB 454 narrowed the regulated population from "instructors who instruct individuals in the use of firearms" to "instructors who instruct private security guards and private investigators in using their weapons on duty." In former (3), the repeal of the inactive status rule, ARM 24.182.509, will make it unnecessary to program and track distinct inactive renewal license fees.

Former (4) is stricken because elsewhere, the rules propose that the department will no longer be responsible for creating the photographic identification cards; the temporary practice permit fee will not be a separate fee; and the department no longer charges a fee to update employee changes. In new (3), it is confusing to list one license type and imply there are others, when there are only two license types that require an examination. In former (6), because the fee is not one set by the department, it is not necessary to refer to it in rule. Rather, this information is provided in application information packets. Finally, (7) and (8) have separate authority and are unnecessary to repeat for the purpose of establishing licensing fees.

~~24.182.403 PHOTO IDENTIFICATION POCKET CARD (1) The licensee is responsible for the maintenance, custody, and control of the card, and shall not permit any unauthorized use of the card. If an identification card is altered in any way, it is invalid.~~

~~(2) Identification cards are renewed pursuant to ARM 24.182.513.~~

~~(3) Each photograph submitted must fairly and accurately represent the appearance of the applicant. If the department determines that its file copy does not bear substantial resemblance to the applicant, the department may require a new photograph.~~

~~(4) Persons licensed by the board who change employers must immediately notify the department to obtain new pocket identification cards naming the new employers.~~

(1) Effective July 1, 2024, each private security firm and electronic security firm must, for each security guard or alarm installer they employ:

(a) provide a laminated photograph identification card using the design specifications in (2);

(b) update the card when the photograph does not clearly and accurately represent the appearance of the individual;

(c) require the individual to wear or carry the card while performing services and show it upon request; and

(d) collect the card when the employment relationship ends.

(2) Each card must be the size of a standard credit card laminated or made with durable materials and contain the following on the front of the card:

- (a) a clear, recent photograph of the individual displayed prominently on the card;
- (b) the first and last name of the individual;
- (c) the individual's license type;
- (d) the name of the firm;
- (e) the supervising private investigator if applicable;
- (f) the individual's license number preceded by the words "the Department of Labor and Industry License Number";
- (g) the card issuance date; and
- (h) the QR code from the department-issued license.
- (3) Each private investigator and any trainee under the private investigator's supervision must carry a photographic identification card described in (2).

AUTH: 37-60-202, MCA

IMP: ~~37-60-309~~ 37-60-407, MCA

REASON: Under SB 454, the implementing authority of 37-60-309, MCA was repealed and moved to 37-60-407, MCA. The statutory mandate for photo identification cards is unique to the private security program. The department supports having cards to mitigate the risk that unlicensed persons may pose as licensees to further fraud and crime. However, the department's duty to create cards is administratively burdensome and the submitted photographs require authentication through comparison of government-issued identification and are often the incorrect size. This manual processing causes delay in issuing the licenses and amounts to approximately 333 hours a year in staff time for the initial creation of cards and 120 hours to create replacement cards when security staff change employers. Additionally, the equipment and materials to make the cards have initial and ongoing investment costs.

Because security firms customarily issue dual-function, company identification and programmable facility access cards to their employees, the department proposes to reduce the redundancy of a department-issued card and instead, specify standard information for the company to include on cards they already issue. This information, if not already contained on the company card, should be easily incorporated. Including the QR code on the card will allow the public, including employers and law enforcement officers, a fast way to confirm active licensure through the department's real time, online licensee lookup system.

In the current process of issuing the department card, the firms are not involved in the ID card process. Placing the duty on the firm to issue, update, and collect the card when employment ends will result in better control of the identification cards and will save costs.

A delayed effective date is necessary to give security firms time to implement the amended rule. The current rule will be in effect until July 1, 2024.

24.182.405 INSURANCE AND SURETY BOND REQUIREMENTS

~~(1) Persons regulated by Title 37, chapter 60, MCA, and licensed as follows shall file a yearly certificate of~~ The following licensees must carry insurance with the board in the following amounts and types:

(a) Private investigators ~~shall maintain~~ a minimum of \$500,000 occurrence form of commercial general liability which includes personal injury.

(b) Electronic security companies ~~shall maintain~~ a minimum of \$500,000 occurrence form of commercial general liability which includes personal injury and errors and omissions coverage.

(c) ~~Contract and proprietary security companies shall maintain~~ Private security firms - a minimum of \$500,000 occurrence form of commercial general liability which includes personal injury.

(d) ~~Certified Private security~~ firearms instructors (CFIs) ~~shall maintain~~ a minimum of \$500,000 occurrence form of commercial general liability which includes personal injury and errors and omissions coverage.

(2) Process servers ~~shall~~ must maintain a surety bond in the amount of \$10,000 for an individual or \$100,000 for a firm. A levying officer may not levy on a judgment that exceeds the value of the bond.

(3) ~~Private investigators with a firearms endorsement, CFIs, and contract and proprietary security companies who employ security guards with firearms endorsements must carry firearms liability coverage.~~ The following licensees must carry firearms liability insurance coverage:

(a) armed private investigators;

(b) private security firearms instructors; and

(c) private security firms who employ armed private security guards.

(4) ~~Except as provided in this rule, all licensees must be insured by a~~ An insurance carrier providing insurance under this rule must be:

(a) and (b) remain the same.

(5) ~~Each licensee shall~~ Licensees subject to this rule must:

(a) immediately inform the department of the cancellation or lapse of required insurance coverage or surety bond; and

(b) direct and authorize the insurance carrier to inform the board if the department of cancellation or lapse of the licensee's required insurance coverage or surety bond is canceled or allowed to lapse.

(6) Licensees must maintain the insurance coverage, or surety bond, ~~and firearms liability coverage~~ required by this rule at all times of active licensure status ~~or place their licenses on inactive status. Failure to carry current insurance during active licensure status is grounds for administrative suspension.~~

AUTH: ~~37-1-131, 37-60-202, MCA~~

IMP: ~~25-1-1111, 37-1-131, 37-1-321, 37-60-202, MCA~~

REASON: Section 37-1-131, MCA refers to duties of boards and is repealed throughout this notice. The proposal will change "board" to "department" and update license naming conventions prompted by SB 454. Sections (1), (3), and (4) are edited for clarity and comprehension. Section (5) clarifies that the duty to report a lapse of coverage belongs to both an individual licensee and an insurance company and is necessary to enhance compliance with an important consumer protection requirement. In (7), it is not necessary to repeat 37-1-321(1)(b), MCA, or clarify that failure to respond to an audit is grounds for disciplinary action or an administrative suspension and results in striking implementation citation to it.

24.182.407 REGULATIONS OF PRIVATE SECURITY GUARD UNIFORM AND PROPERTY BRANDING (1) ~~No individual shall, while performing any duty regulated by Title 37, chapter 60, MCA, have or utilize any:~~

~~(a) uniform, vehicle or equipment displaying the words, "police", "law enforcement officer", or the equivalent thereof; or~~

~~(b) patch, emblem, sign marking, accessory or insignia indicating such uniform, vehicle or equipment is the property of a public law enforcement agency, the state of Montana, or any of its political subdivisions.~~

(2)(1) Effective July 1, 2024, A licensee required a private security firm must provide and require a private security guard to wear a uniform while performing any duty regulated by Title 37, chapter 60, MCA, must have the uniform approved by the board or its designee on duty.

~~(a) All uniforms shall, on the outermost garment except for rainwear or foul weather clothing, clearly display:~~

~~(i) the company name;~~

~~(ii) the individual's name; and~~

~~(iii) the occupational category.~~

~~(3) Uniformed security guards shall wear a patch on their uniforms as follows:~~

~~(a) no less than one inch by three inches in size;~~

~~(b) displaying the words "security", "security officer" or "security guard":~~

~~(i) in block letters; and~~

~~(ii) of contrasting colors; and~~

~~(c) above the left chest pocket.~~

(2) Security guard uniforms must:

(a) clearly display in block letters in a color and reflective material that contrasts with the fabric color, the words "security," "security officer," or "security guard" across the front of any cap and across the back of any shirt, vest, or overcoat to be visible at night, in low light, and at a reasonable distance; and

(b) clearly display the company name in full and the words "security guard" above the left chest pocket area on the front of any shirt, vest, or overcoat on a patch no less than one inch by three inches.

(3) Security vehicles must have "security" clearly displayed on each side of the vehicle.

(4) Uniforms, vehicles, and equipment must not display any accessory, emblem, insignia, patch, seal, or term that is like any used by a federal, state, or local agency.

AUTH: 37-60-407, MCA

IMP: 37-60-407, MCA

REASON: Former (1) is restated at (4) in more simple and broad terms to capture all types of law enforcement or other agencies. In new (1), because a uniform distinguishes security guards from members of the public and law enforcement officers, it is necessary to express the requirement to wear one instead of implying that a uniform is optional.

The changes in new (2) are to make the rule easier to understand and in (2)(a) and (b) to require not just a shirt, but also any garment that may be worn over a shirt and caps to have "security" branding to better identify security guards. Section (3) is a new requirement but one that significantly contributes to distinguishing security personnel from members of the public and law enforcement agents and should be a generally accepted standard of practice that firms already comply with.

A delayed effective date is necessary to give security firms time to implement the amended rule. The current rule will be in effect until July 1, 2024.

24.182.420 QUALIFICATIONS OF FIREARMS FOR ARMED ENDORSEMENT (1) ~~Private investigators and security guards seeking authorization to wear, carry, or possess a firearm in the performance of licensed duties shall submit a complete armed endorsement application, on a form prescribed by the department, and submit evidence of~~ To qualify for an armed endorsement, an applicant must have:

(a) a current Montana license in good standing as a private investigator or a private security guard;

~~(a)(b) satisfactory completion of a~~ successfully completed the firearms training program taught by a board-certified firearms instructor (CFI) and approved by the board or its designee under meeting the requirements of ARM 24.182.801; and, including proof that the applicant qualified with the firearms the applicant will use on duty.

~~(b) the firearm(s) the licensee qualified with, by passing a shooting proficiency test following completion of the firearms training program required by (a).~~

(2) remains the same.

(3) To maintain the endorsement, the endorsee must keep the license in (1)(a) current and in good standing and submit proof of an annual shooting proficiency test using the firearms the armed licensee will use on duty, conducted by a POST-certified firearms instructor or a private security firearms instructor.

AUTH: 37-60-202, 37-60-303, MCA

IMP: 37-60-101, 37-60-202, 37-60-303, 37-60-405, MCA

REASON: The proposal in (1)(a) and (b) reduces wordiness to describe the qualifications for armed endorsement without making any substantive change. New (3) is language taken from ARM 24.182.421, which is proposed to be repealed.

24.182.501 REQUIRED INFORMATION FOR APPLICATION - FINGERPRINTS (1) ~~Prior to granting any license, the board or its designee shall verify the statements made in applications for licensure as deemed necessary to protect the public health, safety, and welfare.~~

~~(2) Each application must be complete and submitted on a form prescribed by the department before a license can be issued or the application is ready for review by the full board as nonroutine under ARM 24.182.508.~~

~~(3)(1) Fingerprints required under Title 37, chapter 60, MCA, shall be submitted to the Federal Bureau of Investigation and the Applicants required to~~

submit fingerprints must first submit a license application and acknowledgement of rights before they take the necessary steps to submit a set of fingerprints to the Montana Department of Justice for examination and issuance of a criminal record history report to the department from the Federal Bureau of Investigation. Final licensure is granted only following receipt and review of the Federal Bureau of Investigation report and any investigations thereof.

(2) A fingerprint report is valid for six months from the date of the department's receipt of the report from the Federal Bureau of Investigation.

(4) Proof of employment, education, and training must be submitted with the application and may include transcripts, diplomas, seminar certificates, course completion certificates, payroll records or income tax returns if self-employed, employee verification, or other supporting evidence.

(5)(3) An incomplete application will time out one year after the date it was initially submitted expires one year after initial submission, and the applicant must reapply and, pay a new application fee, and cause the department to receive a new fingerprint report to be considered for licensure.

AUTH: ~~37-1-131~~, 37-60-202, MCA

IMP: ~~37-1-131~~, 37-60-303, 37-60-304, MCA

REASON: Former (1) and (2) are stricken because they repeat department authority in 37-1-101, MCA, and ARM 24.101.402 to process applications. New (1) includes reference to the statute listing the license types that are subject to fingerprinting and makes an important reference to the process and timing required by the U.S. Department of Justice for the department to acquire the criminal record history report. Sections (2) and (3) have clarifying and style changes only. Former (4) is stricken because it is not necessary to prescribe standard and typical methods of documentary proof of qualifications. These items are prompted by the application form.

24.182.505 WRITTEN EXAMINATIONS (1) If Process server and private investigator applicants must take a written examination is required for licensure, applicants must and achieve a minimum score of 70 percent on each part of the exam to pass.

(2) Examinations may be administered at the board office off-site location approved by the board or its designee. Applicants must schedule examinations by appointment with the department.

(3) In addition to the board's examination fee, a proctoring fee may apply and is set by and payable directly to the examination administrator or vendor. A fee paid directly to the examination proctor, administrator, or vendor may apply in addition to the department's examination fee.

(4) The examination may consist of questions on Montana criminal and civil procedures and Montana laws and rules applicable to the area(s) of licensure sought.

(5)(4) Applicants must:

(a) present the proctor with photo identification and authorization to sit for the examination;

(b) deposit with the proctor all electronic devices, books, notebooks, and other papers prior to taking the examination; and

(c) No applicant may not remove any papers from the examination room.

~~(6)~~(5) Process server examinations have a two-hour time limit and examinees may utilize the ~~board-developed~~ process server handbook.

~~(7)~~(6) Private investigator and ~~resident manager~~ examinations have no time limit.

~~(8)~~ Examination applicants must present photo identification and the notice of examination to be admitted to the examination.

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

~~(10)~~(8) Applicants shall schedule examinations by appointment with the examination administrator. Examinations required for armed status are not subject to this rule.

AUTH: ~~37-1-131~~, 37-60-202, MCA

IMP: 25-1-1104, ~~37-1-131~~, 37-60-303, MCA

REASON: To increase administrative efficiency, it is necessary to clarify that only two license types of licensees require an examination and clarify that armed status examinations are not subject to this rule. It is sufficient and better to state in active voice, the applicant's duty to schedule with the department. Other changes recognize SB 454 amendments, better organize the rule, and address style.

24.182.507 TEMPORARY PROVISIONAL PRACTICE PERMIT – PRIVATE INVESTIGATOR TRAINEES (1) ~~Except for a private investigator applicant or an armed endorsement applicant, the board authorizes the issuance of a temporary practice permit to an applicant meeting the requirements stated in 37-1-305, MCA. An applicant for a private investigator license who does not meet the experience or examination requirements may apply for a provisional permit and work as a trainee under ARM 24.182.511.~~

~~(2) A person receiving a temporary permit must practice under direct supervision, as defined by ARM 24.182.301.~~

~~(3) supervisor must hold a license issued by the board that is:~~

~~(a) unrestricted and in good standing; and~~

~~(b) the same license type sought by the temporary permit holder.~~

(2) A provisional permit under this rule is subject to annual renewal and is valid until the applicant is issued a license, or until the applicant:

(a) fails the first examination for which the applicant is eligible after the department issues the permit; or

(b) exceeds the time limit to complete the work experience.

AUTH: ~~37-1-131~~, ~~37-1-319~~, 37-60-202, MCA

IMP: ~~37-1-305~~, ~~37-1-319~~, 37-60-202, MCA

REASON: The implementation reference to 37-1-305, MCA is incorrect because it is a general statute that only recognizes lack of an examination as grounds to obtain a temporary permit. Section 37-60-202, MCA is the correct implementation citation,

because it specifically mandates the program to "adopt and enforce rules providing for the issuance of probationary identification cards for private investigators and security alarm installers who do not meet the experience or examination requirements."

Because the term "probationary identification card" is ambiguous and may be confused with a disciplinary status, as explained in the reason for ARM 24.182.101 changes, these rules instead will use the term "provisional permit," which is used by the department internally to describe this type of authority to conditionally practice. Under a provisional permit, a private investigator may gain experience and take the examination while working as a trainee. The changes are necessary to recognize this narrow scope of the rule and the terms under which the permit exists, since these are not stated in the statute.

24.182.512 PRIVATE INVESTIGATOR LICENSE QUALIFICATIONS – TRAINING PERMIT (1) ~~Each private investigator applicant shall submit an application compliant with ARM 24.182.501. In addition to the qualifications for licensure in 37-60-303, MCA, each private investigator applicant must have:~~

~~(2)(a) Each private investigator applicant shall submit evidence that the applicant passed a written examination as set forth in per ARM 24.182.505.;~~

~~(3)(b) A private investigator applicant must submit proof of insurance or surety bond per ARM 24.182.405 requirements.;~~ and

~~(4) An applicant for private investigator must list the names and telephone numbers of three references not related to the applicant by blood or marriage. Two of the three references must be:~~

~~(a) former employers;~~

~~(b) individuals or firms with which the applicant had a contractual working agreement if self-employed;~~

~~(c) individuals or firms having knowledge of the agreement or working relationship; or~~

~~(d) as determined acceptable by the board or its designee.~~

~~(5)(c) Applicants for licensure as private investigators must demonstrate three years of full-time experience (5,400 cumulative hours of experience) as follows:~~

~~(a) employment performing investigative-related duties that do not require licensure as a private investigator, or as a private investigator trainee under an approved supervisor;~~

~~(b) remains the same but is renumbered (i).~~

~~(c)(ii) employment in the fire investigative business or as a fire investigator;~~
or

~~(d)(iii) employment as a licensed insurance investigator, with a maximum allowable credit of 2,700 hours.;~~ or

(iv) any other investigative employment approved by the department that is exempt from private investigator licensure in this state.

~~(6)(2) Applicants not meeting the required 5,400 hours of who do not meet the experience requirement in (5) (1)(c) may count up to 2,700 receive credit for hours of training or education as follows:~~

(a) successful completion and verification of the peace officer basic course at the Montana Law Enforcement Academy, ~~which is 900 hours;~~

(b) training related to the scope of practice of a private investigator, ~~per as defined in 37-60-101, MCA;~~ or

(c) remains the same.

(3) An applicant who does not meet the total hours of experience requirements in (1) or (2) may apply for a provisional permit to train as a private investigator under the training program per ARM 24.182.804 to complete the remaining number of hours.

(4) The experience in (1) and training in (2) may be combined to reach the total of 5,400 hours required for licensure.

(5) Training permits may be renewed a maximum of four times.

AUTH: ~~37-1-131~~, 37-60-202, 37-60-303, MCA

IMP: ~~37-1-131~~, 37-60-202, 37-60-303, 37-60-304, MCA

REASON: The changes in new (1)(a) through (c) and (2) more simply and directly state the requirements for licensure as a private investigator, rather than cross-referencing a rule that restates the law. Former (4) is repealed because personal references to demonstrate the character and fitness of applicants are unreliable and rarely, if ever, have resulted in information on which to base a license denial. Instead, applicants answer and attest to a broad personal history questionnaire, and fingerprint background checks supply an additional and reliable means of determining character and fitness. The content in new (3) is taken from ARM 24.182.511, which is proposed for repeal. It is necessary to recognize in new (4) that for persons who do not have the requisite hours of employment, training may supplement all or some of the total hours. New (5) is moved from ARM 24.182.511.

24.182.514 PRIVATE SECURITY GUARD (1) ~~Each private security guard applicant shall submit an application compliant with ARM 24.182.501. In addition to the requirements of 37-60-303, MCA, each security guard applicant must have verification of:~~

(2)(a) ~~Each private security guard applicant shall complete successful completion of the training program required by ARM 24.182.807-; and~~

(3)(b) ~~Each private security guard applicant shall provide evidence that the applicant is currently employed, or a contractual promise of future employment of the applicant upon issuance of a license, with a contract security company, a proprietary security organization, or an electronic security company employment by a private security firm.~~

(4) ~~The employer shall verify the employment and that it has exercised due diligence to verify as true the information provided by the applicant for licensure.~~

(2) ~~The verifications in (1) are not required to be submitted until after the fingerprint background check is successfully completed but are required as a final condition for the department to issue a license.~~

AUTH: ~~2-4-201~~, ~~37-1-131~~, 37-60-202, 37-60-303, MCA

IMP: ~~37-1-131~~, 37-60-202, 37-60-303, 37-60-304, MCA

REASON: The reasons for the changes in former (1) are the same as ARM 24.182.512(1). New (1)(a) and (b) state the same requirements but are more concise. Former (4) is not necessary to require because the fingerprint background check is the best method to determine truthfulness on the application related to criminal background and allows employers to rely on the state's background check rather than doing it themselves.

The proposed process in (2) stems from the statutory definition of a security guard as an individual "employed" by a private security firm. This has generally been interpreted by security firms as a condition to submit the application rather than as a final condition to meet before issuance of the license. The rule changes are necessary to explain the steps and timing for applying for a security guard license and make clear that a security firm is not required to employ an individual during the fingerprint-background phase of the application process.

24.182.516 PROCESS SERVER (1) ~~Each process server applicant shall submit an application compliant with ARM 24.182.501. In addition to the requirements of 25-1-1102 and 37-60-303, MCA, each process server applicant must have:~~

~~(2) A process server applicant must show proof of residence in the state of Montana for at least one year immediately preceding the submission of the application, pursuant to 25-1-1102, MCA.~~

~~(3)(a) Each process server applicant shall submit evidence that the applicant passed a written examination as set forth in per ARM 24.182.505.; and~~

~~(4)(b) A process server applicant must submit proof of a surety bond pursuant to per ARM 24.182.405.~~

AUTH: ~~37-1-131, 37-60-202, 37-60-303, MCA~~

IMP: ~~25-1-1101, 25-1-1102, 25-1-1111, 37-1-131, 37-60-202, 37-60-303, 37-60-304, MCA~~

REASON: Changes are made to make the rule less wordy and easier to understand and refer to the entire statute, instead of repeating only a portion of it, as in former (2).

24.182.518 SECURITY ALARM INSTALLER (1) ~~Each~~ In addition to the requirements of 37-60-303, MCA, each security alarm installer applicant shall submit an application compliant with ARM 24.182.501. must have:

~~(2)(a) Each security alarm installer applicant shall complete verification of successful completion of the training program required by ARM 24.182.810.; and~~

~~(3)(b) Each security alarm installer applicant shall provide evidence that the applicant is currently employed or a contractual promise of future employment of the applicant upon issuance of a license, with a contract security company, a proprietary security organization, or an electronic security company~~ verification of employment by an electronic security firm as a final condition for the department to issue the license.

~~(4) The employer shall verify the employment and that it has exercised due diligence to verify as true the information provided by the applicant for licensure.~~

(2) The verifications in (1) are not required to be submitted until after the fingerprint background check is successfully completed but are required as a final condition for the department to issue a license.

AUTH: ~~37-1-131~~, 37-60-202, 37-60-303, MCA

IMP: ~~37-1-131~~, 37-60-202, 37-60-303, 37-60-304, MCA

REASON: See reason in ARM 24.182.514. The remaining changes are to reduce wordiness.

24.182.520 CERTIFIED PRIVATE SECURITY FIREARMS INSTRUCTOR QUALIFICATIONS – AGE LIMITS ON AMMUNITION (1) ~~An applicant for licensure as a certified~~ In addition to the requirements of 37-60-303, MCA, each private security firearms instructor (CFI) shall submit an application that complies with all of the requirements of ARM 24.182.501 and evidence the applicant must have:

~~(a) is at least 21 years of age;~~

~~(b)(a) meets the insurance requirements stated in~~ required by ARM 24.182.405; and

~~(c)(b) has successfully completed a firearms instructor training course conducted by any of the following:~~

~~(i) through (iv) remain the same.~~

(2) An applicant shall provide the following additional information at the time of application: must provide a detailed curriculum outline required by ARM 24.182.801 for department approval.

~~(a) detailed outlines of all courses to be instructed; and~~

~~(b) proof of education and training, which may include:~~

~~(i) transcripts;~~

~~(ii) diplomas;~~

~~(iii) seminar certificates;~~

~~(iv) course completion certificates; or~~

~~(v) other supporting evidence.~~

(3) Licensed To maintain licensure as a private security firearms instructors shall instructor, the licensee must:

(a) file a yearly certificate of insurance with the board maintain insurance required by ARM 24.182.405; and

(b) conduct at least one board department-approved combat shooting firearms course annually or recertify as an instructor every five years.

(4) Instructors may only offer courses in which they have been approved by the board department to instruct.

AUTH: ~~37-1-131~~, 37-60-202, 37-60-303, MCA

IMP: ~~37-1-131~~, 37-60-202, 37-60-303, MCA

REASON: The changes in (1) are necessary to reflect SB 454 change of terminology of the instructor license type, and it is more accurate to refer to the license

requirements, including fingerprinting authority, in 37-60-303, MCA, rather than to repeat it, or refer to ARM 24.182.501, which would repeat language about the fingerprinting process.

Subsection (1)(a) is necessary to strike because SB 454 authorizes firearms instructors to be licensed at the age of 18 rather than 21. Federal 18 USC §922(b) prohibits a firearms dealer to sell or deliver a handgun or handgun ammunition to anyone under 21, but "unlicensed persons" may not sell, deliver, or transfer handgun or handgun ammunition to anyone under 18 with certain exceptions, one of the exceptions being employment. There is no reason to believe at this time that the change from 21 to 18 will have an impact on the scope of practice of the instructor as it relates to federal or state law.

In (1)(b), the proposed change necessarily reflects that SB 454 limited the scope of regulation of firearms instructors to only "private security" firearms instructors.

It is not necessary to state, as in former (2)(b), what type of proof must be submitted because the documents are prompted to be submitted in the application process. They are not obscure documents; rather they are typical to the industry and are in the possession of the applicant and are not necessary to describe in rule.

In (3), it is necessary to strike the words "combat shooting" course because that term is undefined and the only authorized courses an instructor may teach is that defined in ARM 24.182.801, which currently does not use the term. It is assumed that the point of the requirement is for instructor shooting competency. The department does not have the authority to mandate the licensee to offer a course and so, proposes to allow this competency to be redetermined by a recertification process set at a reasonable interval of time.

24.182.525 SECURITY FIRM COMPANY LICENSURE AND BRANCH OFFICES (1) ~~An applicant for licensure as a contract security company, electronic security company, or proprietary security organization must obtain a company license for the applicant's principal place of business. Subsequent company locations within Montana may be licensed as branch offices. All applications must comply with the requirements stated in ARM 24.182.405, 24.182.407, 24.182.501, 24.182.807, 24.182.810, and 24.182.813. In addition to the requirements of 37-60-303, MCA, electronic and private security firm applicants must submit:~~

~~(2)(a) Company licensees shall provide proof of registration or filing with the Montana Secretary of State's office and provide the following information, if required by the type of firm ownership or by use of an assumed name;~~

~~(a) for individual ownership, the name of the owner and the owner's address;~~

~~(b) for a partnership, a list of partners and their addresses;~~

~~(c) for a limited liability company, a list of the members and their addresses;~~

or

~~(d) for a corporation, a list of principal officers and their addresses.~~

(b) the type of ownership organization (individual, partnership, limited liability company, or corporation) and the names and addresses of the owners, partners, members, or principal officers of the organization;

(c) the names and contact information for the designated manager, the principal office, and any branch office located in Montana;

- (d) a list of all types of firearms and weapons that employees will use; and
- (e) the insurance coverage required by ARM 24.182.405.

~~(3) No branch office shall be authorized for any category of licensure without approval by the board or its designee.~~

~~(4) An applicant for licensure as a company or branch office shall provide the name of the resident manager appointed to exercise direct supervision, control, charge, management, or operation of each company or branch office located in Montana.~~

~~(5) Each branch office shall have at least one resident manager who:~~

~~(a) is typically present during regular Monday through Friday office hours;~~

and

~~(b) has established to the board's satisfaction that the resident manager meets the necessary experience qualifications of ARM 24.182.523.~~

(2) A security firm must update information provided under this rule within 10 days of any change.

(3) A security firm must notify the department within 10 days of the termination of employment of individual security guards or security alarm installers.

AUTH: ~~37-1-131~~, 37-60-202, MCA

IMP: 37-60-202, ~~37-60-302~~, 37-60-303, MCA

REASON: The changes in (1), (3), and (5) are necessary to comply with SB 454 related to naming conventions and repeal of the branch office and resident manager requirements. The remaining changes repeal the reference to multiple rule numbers as unnecessary; recognize a conditional rather than a mandatory requirement to register or file with the SOS; require necessary name, ownership, facility, and contact information to be reported; and clarify the duty to report firearms used belongs to the security firm rather than the individual security guard. The notification is typically required in professional licensing for these types of relationships to allow the department to remove that information from the license.

24.182.801 FIREARMS TRAINING COURSES (PROGRAM) - INITIAL QUALIFICATION AND REQUALIFICATION ~~(1) Certified firearms instructors (CFI) shall submit course outlines for approval by the board or its designee.~~ Firearms training courses must meet the objectives of firearm safety and shooting proficiency, with emphasis on shooting distances of less than 15 yards.

(2) Firearms training courses must address the following issues for initial qualification:

~~(a) and (b) remain the same.~~

~~(c) relevant Montana law regarding the use of deadly force, including civil and criminal liability; and~~

~~(d) shooting judgment; and~~

(e) shooting proficiency using the firearm or firearms the licensee will use on duty.

~~(3) Applicants must include a detailed summary of the firearms training courses required in (2).~~

~~(4) Demonstrated competency for both the proficiency test and the written test shall be determined by the certified firearms instructor.~~

(3) To requalify, an armed licensee must annually pass a shooting proficiency test conducted by a POST-certified firearms instructor or private security firearms instructor using the firearm or firearms the licensee will use on duty.

(4) The instructor must:

(a) require passage of a written test for initial qualification; and

(b) provide each successful participant for initial qualification and annual requalification a certificate that includes:

(i) the date or dates of course completion;

(ii) the name of the instructor;

(iii) if the course is an initial qualification or an annual requalification; and

(iv) the firearm or firearms used to qualify or requalify.

AUTH: 37-60-202, 37-60-303, MCA

IMP: 37-60-202, 37-60-303, MCA

REASON: The first sentence in (1) and former (3) repeat provisions in ARM 24.182.520 about approval of the firearm instructor's curriculum and are not necessary to repeat here. Changes in (2) and (3) highlight the distinction between initial qualification and annual requalification made in ARM 24.182.420 and are necessary to reiterate to ensure both firearms instructors and armed endorsement applicants are aware of the distinction and need to qualify with the firearms they will be using on duty. New (3) expresses a tacit expectation for firearms instructors to issue certificates and includes criteria to ensure the department receives necessary and standardized information.

24.182.804 PRIVATE INVESTIGATOR TRAINING PROGRAM ~~(1) The training of a private investigator shall, at a minimum, address the following:~~

(1) To receive experience credit for on-the-job training for licensure as a private investigator, the training must be:

(a) conducted under an employer-employee relationship with a private investigator supervisor who is licensed in good standing and without disciplinary action in the past five years;

(b) directly supervised to include daily contact and weekly meetings (in person or by videoconference); and

(c) documented by the trainee and signed off by the supervisor as directed by a form or online submission to the department on a quarterly basis.

(2) The content of the training must include:

(a) through (n) remain the same.

~~(2) Private investigators supervising trainees under ARM 24.182.511 shall submit evidence of completion of the training program on quarterly reports as provided in ARM 24.182.511. Private investigator applicants meeting experience requirements provided in ARM 24.182.512 are deemed to have met the training program requirements set forth above. All other applicants shall submit evidence of having completed the training program as provided by ARM 24.182.512.~~

~~(3) Armed private investigators shall complete firearms qualification and requalification in accordance with ARM 24.182.420 and 24.182.421.~~

(3) Both a supervisor and a trainee must notify the department within 10 days of the termination of the trainee's employment.

AUTH: ~~37-1-131~~, 37-60-202, 37-60-303, MCA

IMP: ~~37-1-131~~, 37-60-202, 37-60-303, MCA

REASON: The rule clarifies that supervision may be conducted by videoconference, including supervision from a supervisor licensed in another jurisdiction, thus broadening the training opportunities available for people desiring to become private investigators. It is necessary to include a good standing license requirement for supervisors and a mutual duty to notify of termination of the employment relationship as these are typical provisions associated with various supervisory training relationships in professional licensing.

24.182.807 PRIVATE SECURITY GUARD TRAINING PROGRAM (1) Each ~~private security company or organization~~ firm that employs or intends to employ an individual as a private security guard must certify, ~~as part of the individual's license application~~ a condition for the department to issue the license, that the individual has successfully completed a minimum of 16 hours of training as ~~a prerequisite to licensure~~ follows and ~~prior to undertaking any of the duties defined as the practice of before practicing as a security guard:~~

~~(2) The training must address each of the following areas:~~

~~(a) through (h) remain the same.~~

~~(i) ethical and legal issues, including, but not limited to:~~

~~(i) through (iv) remain the same.~~

~~(v) preservation of crime scene and handling of evidence; and~~

(vi) weapons or equipment other than firearms to be carried; and

~~(vi) remains the same but is renumbered (vii).~~

~~(3) In addition to these training requirements, armed security guards shall complete firearms qualification and requalification in accordance with ARM 24.182.420 and 24.182.421.~~

~~(4) remains the same but is renumbered (2).~~

AUTH: ~~37-1-131~~, 37-60-202, 37-60-303, MCA

IMP: ~~37-1-131~~, 37-60-202, 37-60-303, MCA

REASON: The changes in (1) clarify that an applicant for a security guard license does not require training to be completed before the application is submitted but can be completed as a condition to final approval and issuance of the license after the criminal background check is complete. New (2)(i)(vi) requires training on weapons other than firearms as it would be a significant omission from the training requirements of security guards. Section (3) is unnecessary to repeat here because the rule only deals with the general security guard license; the firearm endorsement is covered under ARM 24.182.420 as amended.

24.182.810 SECURITY ALARM INSTALLER TRAINING PROGRAM

(1) Each electronic security company that employs or intends to employ an individual as a security alarm installer must certify, as part of the individual's license application a condition for the department to issue the license, that the individual has successfully completed a minimum of 16 hours of training as a ~~prerequisite to licensure~~, follows and prior to undertaking any of the duties defined as the practice of before practicing as a security alarm installer.;

~~(2) The training must address each of the following areas:~~

~~(a) through (f) remain the same.~~

~~(3) remains the same but is renumbered (2).~~

AUTH: ~~37-1-131~~, 37-60-202, 37-60-303, MCA

IMP: ~~37-1-131~~, 37-60-202, 37-60-303, MCA

REASON: The reason for the change in (1) is explained in changes proposed to ARM 24.182.807(1) as the process and substance is the same for security guards as it is for security alarm installers.

24.182.2301 UNPROFESSIONAL CONDUCT In addition to 37-1-316, MCA and provisions in Title 37, chapter 60, MCA and these rules, the following is unprofessional conduct:

(1) remains the same.

(2) Committing any act of sexual abuse, sexual misconduct, or sexual exploitation regardless of whether the act is related to the licensee's practice;

(3) Violating the Montana Human Rights Act, Title 49, MCA, as determined by the Montana Human Rights Commission;

~~(2) and (3) remain the same but are renumbered (4) and (5).~~

~~(4)(6) Accepting investigations which conflict with previous or current investigations if the investigations are substantially related;~~

~~(5) and (6) remain the same but are renumbered (7) and (8).~~

~~(7)(9) Filing a complaint with, or providing information to the ~~board~~ department, which the licensee reasonably knows or ought to know is false or misleading. ~~This provision does not apply to any filing of complaint or providing information to the board when done in good faith;~~~~

~~(8) Violating, or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of Title 37, chapter 60, MCA, or rule promulgated thereunder, or any order of the board;~~

~~(9)(10) Violating any local, state, federal, provincial, or tribal statute law or administrative rule governing or affecting the professional conduct practice of any licensee;~~

~~(10) Acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence or malpractice;~~

~~(11) Accepting an assignment from a client that is directly adverse in any way to a present client or former client or if there is a significant risk that if the assignment is ~~substantially related to the prior professional relationship with the~~~~

former client will materially limit the licensee's responsibilities to a present or former client;

~~(12) Failing to render adequate supervision, management, training supervise, manage, train, or control of auxiliary staff or other persons, including licensees, practicing under the licensee's supervision or control;~~

~~(13) remains the same.~~

~~(14) Delegating a professional responsibility to a person when the licensee knows or has reason to know that the person is not qualified by training, experience, license or certification to perform the delegated task;~~

~~(15) and (16) remain the same but are renumbered (14) and (15).~~

~~(17)(16) Failing to put in trust or otherwise properly segregate funds in connection with a specific project for a specific purpose; and~~

~~(17) Failing to show proof of licensure upon request of any member of the public or law enforcement agency; and~~

~~(18) Failure Failing to respond to or cooperate with a board or department request or inquiry.~~

AUTH: ~~37-1-131, 37-1-319,~~ 37-60-202, MCA

IMP: ~~37-1-131, 37-1-316,~~ 37-60-202, 37-60-401, MCA

REASON: Sections (2) and (3) are routinely added to unprofessional conduct rules for professional and occupational boards and programs to give guidance to licensees and to be able to prosecute misconduct of this kind. The last sentence in former (7) is necessary to strike because it misapplies 37-1-308, MCA in this context. There is no defense or exception to providing misleading information to the department. Former (8) is stricken as it repeats 37-1-316(2) and (8), MCA. Former (10) is covered by failing to meet generally accepted standards of practice at 37-1-316(18), MCA. Section (11) clarifies awkward language involving the conflict of interest at issue between multiple clients on related matters. Section (12) is edited to be less wordy. Section (14) is deleted because it repeats (12) and adds an element of intent in conflict with strict liability of (12). Section (17) is necessary to emphasize the need to demonstrate licensure and is a typical requirement of professional and occupational licensing boards and programs. Section (18) is necessary to clarify that a person may respond in an uncooperative manner.

5. The rules proposed to be repealed are as follows:

24.182.101 BOARD ORGANIZATION

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

24.182.201 PROCEDURAL RULES

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

24.182.202 PUBLIC PARTICIPATION

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

24.182.421 REQUALIFICATION REQUIRED ANNUALLY

AUTH: 37-60-202, 37-60-303, MCA
IMP: 37-60-202, 37-60-303, 37-60-405, MCA

24.182.504 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

24.182.508 NONROUTINE APPLICATIONS

AUTH: 37-1-131, MCA
IMP: 37-1-101, 37-1-131, MCA

24.182.509 INACTIVE STATUS AND CONVERSION TO ACTIVE STATUS

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

24.182.510 APPLICANTS WITH CRIMINAL CONVICTIONS

AUTH: 37-1-131, MCA
IMP: 37-1-101, 37-1-131, MCA

24.182.511 PRIVATE INVESTIGATOR TRAINEE

AUTH: 37-1-131, 37-60-202, MCA
IMP: 37-1-131, 37-60-202, MCA

24.182.513 RENEWALS

AUTH: 37-1-141, 37-60-202, MCA
IMP: 37-1-141, MCA

24.182.519 ALARM RESPONSE RUNNER

AUTH: 37-1-131, 37-60-202, 37-60-303, MCA
IMP: 37-1-131, 37-60-202, 37-60-303, 37-60-304, MCA

24.182.523 RESIDENT MANAGER

AUTH: 37-1-131, 37-60-202, 37-60-303, MCA
IMP: 37-1-131, 37-60-202, 37-60-303, 37-60-304, MCA

24.182.813 ALARM RESPONSE RUNNER TRAINING PROGRAM

AUTH: 37-1-131, 37-60-202, 37-60-303, MCA
IMP: 37-1-131, 37-60-202, 37-60-303, MCA

24.182.2101 STANDARDS FOR CONTINUING EDUCATION

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

24.182.2103 ANNUAL CONTINUING EDUCATION REQUIREMENTS

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

24.182.2105 NON-APPROVED ACTIVITIES

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

24.182.2108 AUDITING OF CONTINUING EDUCATION HOURS

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

REASON: ARM 24.182.101, 24.182.201, 24.182.202, 24.182.508, and 24.182.510 are repealed because without a board, it is no longer necessary to adopt by reference the board organization, procedural rules, public participation rules, nonroutine application rules, and applicants with criminal convictions rules that govern the Department of Labor and Industry and department-administered programs.

ARM 24.182.421 is repealed because some of its content unnecessarily repeat statutes that define "armed" and define the renewal process. The remaining content is combined with ARM 24.182.420.

ARM 24.182.504 is repealed because rulemaking is no longer required with the passage of Ch. 390, L. 2023 (House Bill (HB) 583), which addresses the elements that were in this rule.

ARM 24.182.509 is repealed because only 4 out of 1,935 licensees are in inactive status, or two-tenths of a percent, and is consistent with historical numbers since the rule's enactment in 2017.

The justification given for providing an inactive status was to temporarily waive continuing education, insurance, or bond requirements and save costs for licensees who temporarily withdraw from their practices, without an analysis of the

demand for the status, how much licensees would save, or costs to the department to administer. See MAR Notice No. 24-182-35.

This package repeals continuing education requirements, eliminating the need for a waiver. For the remaining insurance and bond requirements, the cost to administer an inactive status, which is passed on to all licensees, outweighs the benefit for such a small number. For those who temporarily withdraw from practice and want relief from these requirements, the license may be allowed to expire and can be renewed per 37-1-141, MCA, prior to its termination, or after termination by meeting qualifications for licensure and retaking the examination.

ARM 24.182.511 is repealed and its contents combined with ARM 24.182.512 and 24.182.804.

ARM 24.182.513 is repealed because it is not necessary to repeat 37-1-141, MCA, on renewal of licenses, nor is it necessary to refer to other administrative rules. Section (3) is unnecessary because a new process involving photographic identification cards is proposed in ARM 24.182.403.

ARM 24.182.519, 24.182.523, and 24.182.813 are repealed by the repeal in Ch. 481 L. 2023 (SB 454) of alarm response runner and resident manager license types and by extension, related training programs.

ARM 24.182.2101, 24.182.2103, 24.182.2105, and 24.182.2108 establishing a requirement, standards, and auditing for continuing education (CE) for all licensees is repealed. The justification provided for adopting this requirement was that 8 hours was "necessary to ensure ongoing competence" for each individual licensee. First, it is clearly a discretionary decision of a board to require CE under 37-1-306, MCA (for boards) and 37-1-420, MCA (for programs without boards). CE requirement is a discretionary decision that should be based on an analysis of evidence specific to the job duties of the license type, deficits in training that can be extrapolated from complaints received from consumers, the availability and cost of continuing education, the costs for the department to administer audits, and professional research into the link between different methods of continuing education and professional outcomes. Lacking any of this evidence, the department proposes to repeal the CE rules and instead, focus efforts on research and seeking professional and public comment of the efficacy of the current training requirements and the qualifications for initial licensure and armed status. These efforts will include analysis of the benefits and burdens of continuing education as it relates individually to private investigators, security guards, and alarm installers. In the meantime, the complaint and disciplinary process will operate as a method to maintain competency in the profession.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 22, 2023.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by electronic mail on May 25, 2023.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses. To the extent there may be a business impact, the department expects these rules to assist businesses by decreasing red tape and by simplifying, streamlining, and clarifying business obligations.

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

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

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

Certified to the Secretary of State August 15, 2023.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of
ARM 32.15.102 pertaining to records
to be kept

NOTICE OF PROPOSED
AMENDMENT

NO PUBLIC HEARING
CONTEMPLATED

TO: All Concerned Persons

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

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Livestock no later than 5:00 p.m. on , September 18, 2023 to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N Roberts St., Room 304, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9525; fax (406) 444-4316; TDD/Montana Relay Service 1 (800) 253-4091; or e-mail MDOLcomments@mt.gov.

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

32.15.102 RECORDS TO BE KEPT (1) Each licensed market, livestock video auction, or livestock dealer shall keep and maintain a complete, ~~true~~ and accurate record of all animals purchased and sold, including description of the animal, brand or brands carried, if any, name of person selling or offering for sale, date of sale, and the name of the person to whom sold.

(2) Each licensed market, livestock video auction, or livestock dealer shall keep and maintain business records showing the following information:

(a) The names of the owners or persons having an interest in the market, livestock video auction, or livestock dealer.

(b) The names of the managers or operators of the market, livestock video auction, or livestock dealer.

(c) The names of the owners of the premises upon which the market is located if different than the owners of the licensed market; if a corporation, the names of the directors, officers, and the stockholders, showing their interest in the corporation.

(d) Any contracts or leases executed in connection with the operation of the market, livestock video auction, or livestock dealer.

(e) The type of organization used in operating the market, livestock video auction, or livestock dealer and the members thereof.

(f) If a corporation, the names of the directors, officers, and the stockholders, showing their interest in the corporation.

(3) ~~Such r~~Records and information must be available for inspection and examination by any ~~specifically qualified and authorized agent of the Department of Livestock, Brands Enforcement Division.~~ Such information as provided above and must be submitted by the licensee of any market to the ~~Montana department of livestock, brands enforcement division~~ upon request. All records used in the purchase and sale of livestock and all records required by this rule must be kept and maintained by the licensed market, livestock video auction, or livestock dealer for a period of not less than 5 years.

AUTH: 81-8-231, MCA

IMP: 81-8-231, 81-8-251, 81-8-264, 81-8-271, MCA

REASON: The department proposes to amend this rule to comply with the revisions of 81-8-213, 81-8-251, 81-8-252, 81-8-264, and 81-8-265, MCA, passed by the Montana State Legislature in 2023 via HB 153 carried by Representative Ler at the request of the department. The changes proposed by the department ensure that those operating sales have the same requirements as physical livestock markets and make payment to consigners at the conclusion of a sale.

Other language has been updated for clarity and conciseness, and implementing statutes have been updated.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Livestock, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-1929; or e-mail MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., September 22, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Executive Director at the above address no later than 5:00 p.m., September 22, 2023.

6. 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 26 persons based on approximately 266 currently licensed markets, video livestock auctions, and livestock dealers.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. The primary bill sponsor was contacted by email on July 18, 2023.

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

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

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

Certified to the Secretary of State August 15, 2023.

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF PUBLIC HEARING ON
34.7.201 through 34.7.205 pertaining) PROPOSED REPEAL
to the application of reimbursement)
for service members' group life)
insurance premiums)

TO: All Concerned Persons

1. On September 14, 2023, at 1:00 p.m., the Department of Military Affairs will hold a public hearing via Zoom (<https://mt.gov.zoom.us/j/84161110845?pwd=SnVjNGVIZGVKa1JsTHhJcUZYMVE2UT09>) to consider the proposed repeal of the above-stated rules.

2. The Department of Military Affairs 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 Military Affairs no later than 9:00 a.m. on September 14, 2023, to advise us of the nature of the accommodation that you need. Please contact Sundi West, Department of Military Affairs, 1956 Mount Majo Street, Fort Harrison, Montana, 59636; (406)324-3330; or email sundiwest@mt.gov.

3. The department proposes to repeal the following rules:

34.7.201 DEFINITIONS

AUTH: 10-1-105, 10-1-1114, MCA
IMP: 10-1-1111, 10-1-1113, 10-1-1114, MCA

34.7.202 ELIGIBILITY

AUTH: 10-1-105, 10-1-1114, MCA
IMP: 10-1-1111, 10-1-1113, 10-1-1114, MCA

34.7.203 LIMITATIONS ON REIMBURSEMENT

AUTH: 10-1-105, 10-1-1114, MCA
IMP: 10-1-1111, 10-1-1113, 10-1-1114, MCA

34.7.204 APPLICATION FOR REIMBURSEMENT

AUTH: 10-1-105, 10-1-1114, MCA
IMP: 10-1-1111, 10-1-1113, 10-1-1114, MCA

34.7.205 FURTHER APPROPRIATION REQUIRED

AUTH: 10-1-105, 10-1-1114, MCA
IMP: 10-1-1111, 10-1-1113, 10-1-1114, MCA

REASON: The proposed repeal of ARM 34.7.201 through ARM 34.7.205 is direct implementation of House Bill 89 (2023), repeal of the Insurance Premium Reimbursement Program. This removes the need for the rules.

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: Sundi West, Department of Military Affairs, 1956 Mount Majo Street, Fort Harrison, Montana, 59636; (406)324-3330; or email sundiw@mt.gov, and must be received no later than 5:00 p.m., September 22, 2023.

5. Sundi West, Department of Military Affairs, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person 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 is available on the department website at <https://dma.mt.gov/> or the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was contacted via email on April 18, 2023.

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/ Sundi West
Sundi West
Rule Reviewer

/s/ J. Peter Hronek
J. PETER HRONEK
Director
Military Affairs

Certified to the Secretary of State August 15, 2023.

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 37.34.1501 pertaining to) PROPOSED AMENDMENT
Developmental Disabilities Program)
Incident Reporting and Handling)

TO: All Concerned Persons

1. On September 15, 2023, 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/89044101968?pwd=My9OODdtR1I1Q3VHNEZEEOG1JT2dmdz09>, meeting ID: 890 4410 1968, and password: 221290; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 890 4410 1968, and password: 221290. Find your local number: <https://mt-gov.zoom.us/u/khEXFfrKJ>.

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 September 1, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

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

37.34.1501 INCIDENT REPORTING AND HANDLING, PURPOSE

(1) ~~These~~ This rules governs the reporting and handling of incidents which harm or could result in harm to a persons with a developmental disability who receives services funded by the Developmental Disabilities Program of the department.

(a) The Developmental Disabilities Program Incident Management ~~Procedures~~ Manual, dated ~~February 1, 2013~~ July 1, 2023, sets forth further requirements and criteria that govern the incident management system for the Developmental Disabilities Program of the department.

(b) The department adopts and incorporates by reference the Developmental Disabilities Program Incident Management ~~Procedures~~ Manual, dated ~~February 1, 2013~~ July 1, 2023.

(c) remains the same.

(d) Incidents constituting abuse and neglect of a child as defined in 41-3-102, MCA or abuse, neglect, and/or exploitation of a person with a developmental disability as defined in 52-3-803, MCA are subject to the statutory and rule provisions governing the reporting, investigation, and protection of those circumstances.

AUTH: 53-20-203, 53-20-204, MCA
IMP: 53-20-205, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.1501.

The following summary explains the reasonable necessity for the proposed rule amendment.

The purpose of this amendment is to adopt and incorporate into rule the revised Incident Management Manual. The manual was revised to eliminate unnecessary and duplicative procedures, as required by 53-20-215, MCA. The changes to the manual include updated incident types, streamlined responsibilities and reporting timeframes for state staff and providers, a linked glossary, updated language, implementation of the High-Risk Review form, and alignment with the data management system. The manual will be dated July 1, 2023. Notwithstanding that date, the department intends that providers will begin following the manual only when this rule is finalized and effective.

The department's authorizing statute is 53-20-203, MCA, which states that the department shall carry out the review of administrative rules, policies, and procedures provided for in 53-20-215, MCA, and take the steps necessary to eliminate or change a rule, policy, or procedure found by the review to be unnecessary, duplicative, or in need of revision, including applying for any amendments to Medicaid waivers.

Fiscal Impact

The proposed rule amendment has no anticipated fiscal impact implications.

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: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., September 22, 2023.

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 paragraph 5.

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

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

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

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

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

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ David Gerard
David Gerard, Deputy Director
Department of Public Health and Human
Services

Certified to the Secretary of State August 15, 2023.

BEFORE THE MONTANA TAX APPEAL BOARD
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 2.51.201, 2.51.307, and 2.51.403)
pertaining to model procedural rules,)
orders of the board, and decision by)
the board)

TO: All Concerned Persons

1. On July 7, 2023, the Montana Tax Appeal Board published MAR Notice No. 2-51-629 pertaining to the proposed amendment of the above-stated rules at page 596 of the 2023 Montana Administrative Register, Issue Number 13.

2. No comments were received.

3. The board has amended ARM 2.51.201, 2.51.307, and 2.51.403 exactly as proposed.

/s/ Dave McAlpin
Dave McAlpin, Chair
Montana Tax Appeal Board

/s/ Amie Zendron
Amie Zendron, Rule Reviewer
Montana Tax Appeal Board

Certified to the Secretary of State August 15, 2023.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 2.59.104 pertaining to bank)
semiannual assessments)

TO: All Concerned Persons

1. On July 7, 2023, the Department of Administration published MAR Notice No. 2-59-639 pertaining to the proposed amendment of the above-stated rule at page 599 of the 2023 Montana Administrative Register, Issue Number 13.

2. No comments were received.

3. The department has amended ARM 2.59.104 exactly as proposed.

/s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

/s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 15, 2023.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 2.59.1738 pertaining to renewal)
fees of mortgage brokers, mortgage)
lenders, mortgage servicers, and)
mortgage loan originators)

TO: All Concerned Persons

1. On July 7, 2023, the Department of Administration published MAR Notice No. 2-59-640 pertaining to the proposed amendment of the above-stated rule at page 602 of the 2023 Montana Administrative Register, Issue Number 13.
2. No comments were received.
3. The department has amended ARM 2.59.1738 exactly as proposed.

/s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

/s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 15, 2023.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 6.6.4802 pertaining to Fire)
Premium Allocation and ARM)
6.6.4803 pertaining to Presumptively)
Reasonable Allocations)

TO: All Concerned Persons

1. On May 26, 2023, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-276 regarding the proposed amendment of the above-stated rules at page 460 of the 2023 Montana Administrative Register, Issue Number 10. On July 7, 2023, the commissioner published an amended notice on the proposed amendment at page 605 of the 2023 Montana Administrative Register, Issue Number 13.

2. CSI has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Mark Mattioli
Mark Mattioli
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 August 15, 2023.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 6.6.6006 pertaining to Bail Bond)
Documents)

TO: All Concerned Persons

1. On June 23, 2023, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-277 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 534 of the 2023 Montana Administrative Register, Issue Number 12.

2. On July 20, 2023, a public hearing was held in person and electronically to consider the rulemaking. Testimony was provided by five opponents of the amended proposed rule; additional attendees were present but did not provide oral testimony. One written comment was received on July 24, 2023, by email.

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

6.6.6006 BAIL BOND DOCUMENTS (1) through (4) remain as proposed.

(5) A surety bail insurance producer licensed to sell, solicit, or negotiate commercial bail bonds pursuant to Title 33, chapter 17, MCA, who effects an arrest or surrender pursuant to 46-9-510(1), MCA, shall notify CSI in writing of the arrest or surrender within seven business days.

(a) The written notice of the arrest or surrender shall provide the following information:

(i) full name of the principal/defendant ~~arrested~~ who was arrested or surrendered;

(ii) criminal court case number and county for which the principal's/defendant's bail bond was posted;

(iii) dollar amount of the principal's/defendant's bail bond;

(iv) address or precise location, date, and time of arrest, and any persons who assisted in an arrest, if an arrest was effected;

(v) name, license number, and contact information of the producer who effected the arrest or surrender;

(vi) description of probable cause for the arrest, if an arrest was effected;

(vii) surrender location, date, and time (if known);

(viii) local sheriff's office or police department that the producer notified of the intent to apprehend the principal/defendant, including the date and time of the notice, if an arrest was effected;

(ix) local sheriff's office or police department that the producer notified after the arrest of the principal/defendant, including the date and time of the notice, if an arrest was effected;

(x) an explanation if the notice of intent to apprehend the principal/defendant apprehension was not provided, or was provided less more than 6 hours before the arrest, or if the notice of arrest was not provided immediately after the arrest, if an arrest was effected;

(xi) producer signature, contact information, and license number of the producer completing the form.

(b) The form for providing the foregoing notice, a Surety Bail Bond Insurance Producer Arrest and Surrender Report, is available on the website of CSI.

(c) As used in this rule, the "producer . . . who effects an arrest or surrender" refers to any producer who physically arrests or surrenders a principal/defendant or any producer who requests, orders, or otherwise causes the arrest or surrender of a principal/defendant. A "surrender" includes any action, process, or procedure by which a producer requests bail be exonerated pursuant to 46-9-510(2), MCA.

AUTH: 33-26-108, MCA

IMP: ~~33-17-1001, 33-17-1102, 33-18-213, 33-26-108, 46-9-403, 46-9-510,~~
MCA

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

COMMENT #1: Multiple commenters requested clarity on the phrase, "producer who effects an arrest or surrender." Commenters also questioned whether this phrase would encompass a producer who requests another person or entity to arrest the defendant.

RESPONSE #1: CSI has amended the rule to define a "producer . . . who effects an arrest or surrender" as the "producer who physically arrests or surrenders a principal/defendant or any producer who requests, orders, or otherwise causes the arrest or surrender of a principal/defendant." CSI realizes that, for example, where one licensed producer requests another licensed producer to arrest a principal/defendant, both producers would be required to submit reports.

COMMENT #2: Multiple commenters requested clarity on whether arrests that take place out of state need to be reported to CSI.

RESPONSE #2: CSI has amended the requirements of this rule to apply only to "A surety bail insurance producer licensed to sell, solicit, or negotiate commercial bail bonds pursuant to Title 33, chapter 17, MCA, who effects an arrest or surrender pursuant to 46-9-510(1), MCA . . ." Under this amended language, any out-of-state arrest or surrender only needs to be reported if the arrest or surrender was "effected" by a Montana licensed producer using the authority granted to Montana producers under 46-9-510(1), MCA. CSI would expect that most other states would not recognize the authority granted to Montana producers under 46-9-510(1), MCA, for arrests or surrenders outside the borders of Montana; however, it is certainly possible. Under this language, if the bondsman holds a Montana license and relies

on 46-9-510(1), MCA, for the arrest or surrender, it must be reported. Presumably any arrest of a principal/defendant whose bail bond ensures an appearance in Montana will be surrendered in Montana, triggering a surrender report.

COMMENT #3: Multiple commenters asked if a bond "revocation" needs to be reported to CSI. One commenter submitted proposed language that would explicitly require that a "revocation" be reported.

RESPONSE #3: CSI understands that by using the term "revocation," commenters are referring to the process under 46-9-510, MCA, under which a bond may be exonerated upon the surety company surrendering a defendant to any peace officer or detention facility of the state. CSI understands this process may occur even if the bondsman had no part in the arrest, where for example the principal/defendant is arrested by law enforcement on unrelated charges. CSI's position is that this type of "revocation" plainly falls within the meaning of "surrender." However, to ensure there is no confusion, CSI has added a definition of "surrender" to include "any action, process, or procedure by which a producer requests bail be exonerated pursuant to 46-9-510(2), MCA."

COMMENT #4: One commenter submitted proposed language to make clear that surrenders and "revocations" be contemplated in the written notice and required information.

RESPONSE #4: CSI has amended (5)(a) to apply to arrests or surrenders and has amended subsections of (5)(a) to apply to arrests or surrenders or both. Response #3 addresses the concern that "revocations" should be reported.

COMMENT #5: One commenter pointed out that contrary to the statute, the proposed language in the rule at (5)(a)(x) requires that the producer provide an explanation if the notice is provided to law enforcement "less" than 6 hours prior to an arrest. One commenter suggested in writing that this explanation be provided for an "arrest or surrender."

RESPONSE #5: CSI agrees that the term "less" is incorrect in (5)(a)(x). In response, CSI has struck the word "less" in (5)(a)(x) and replaced it with "more." This is now consistent with the requirement in New Section 3(1)(a) of HB 62 that the intent to apprehend be reported no more than 6 hours prior to the arrest. CSI does not agree that "or surrender" should be included as HB 62 does not require notice to law enforcement of a surrender.

COMMENT #6: Multiple commenters suggested proposed language that would explicitly require bondsmen to report arrests for which they were not present, including out-of-state arrests that they requested.

RESPONSE #6: HB 62 is primarily focused on regulating arrests or surrenders that occur in Montana. The language as amended in this rule will capture any arrests or surrenders that occur in Montana. An out-of-state arrest that results in a Montana

surrender will still require reporting of the Montana surrender. Any arrest that is at the request of a licensed producer will still require a report, even if the producer was not present for the arrest. This is sufficient to identify potential abuses.

COMMENT #7: Multiple commenters expressed confusion over the definition of the term "arrest," noting that upon posting bail for a principal the principal is already in their "custody." One commenter noted he could "chain them up in my basement, as long as I feed and water them. I am just their jailer . . . I'm not arresting them. I'm just apprehending them."

RESPONSE #7: CSI disagrees. Upon issuing a surety policy the producer does not immediately "arrest" the principal and hold the principal in detention or custody pending trial. To the contrary, the writing of a bail bond satisfies a condition of the release of a defendant from custody that has been set by a court. A licensed surety producer is granted the privilege to use reasonable force to arrest a defendant and surrender the defendant into the custody of the state, but only under circumstances described in HB 62 at New Section 3 and the amended 46-9-510, MCA. Any detainment or custody beyond what is specifically granted would be the subject of possible civil and criminal enforcement. CSI sees no need to clarify the concepts of arrest, custody, and detention in this rule as they are well-developed concepts in statute and case law. CSI notes that HB 62 will require education in these concepts as a prerequisite for licensing as a surety bail bond producer.

COMMENT #8: One commenter suggested removing the requirement to report the "address or precise location" in (5)(a)(iv) of an arrest and "surrender location, date, and time (if known)" in (5)(a)(vii). The commenter suggested instead that CSI require reporting of "details" of the arrest or surrender.

RESPONSE # 8: CSI appreciates the comment. CSI prefers to have specific requirements to report rather than nonspecific directives such as "details." To the extent that CSI has further questions, CSI can follow up with the producer. Alternatively, there is nothing preventing a producer from adding details to a report if the producer so desires.

5. Upon further review, CSI has struck four implementing statutes that were irrelevant to this rule and were inadvertently included in the proposal notice.

6. The effective date of this rulemaking is January 1, 2024.

/s/ Ole Olson
Ole Olson
Rule Reviewer

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

Certified to the Secretary of State August 15, 2023.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 6.6.5050 pertaining to Status of)
Carriers as Small Insurer Health)
Carriers)

TO: All Concerned Persons

1. On July 7, 2023, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-278 pertaining to the proposed amendment of the above-stated rule at page 608 of the 2023 Montana Administrative Register, Issue Number 13.

2. A public hearing was not contemplated or requested. The department received no comments or testimony on the proposed amendment.

3. CSI has amended the above-stated rule as proposed.

4. The effective date of this rulemaking is January 1, 2024.

/s/ Mark Mattioli
Mark Mattioli
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 August 15, 2023.

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

In the matter of the adoption of) NOTICE OF ADOPTION OF
emergency rules closing portions of) EMERGENCY RULES
the Flathead and Clark Fork Rivers in)
Sanders County)

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of emergency rules:

(a) The River Road East Fire continues to grow near the Clark Fork and Flathead Rivers in Sanders County, Montana. Fire activity continues to be significant along the river corridor. On August 19, 2023, the department received a request from fire incident command to close portions of the Clark Fork and Flathead Rivers near the fire area. Aerial fire operations are occurring along the river corridor, and the fire is expected to continue to grow, presenting safety issues for fire personnel and the public in the river corridor.

(b) In order to protect the public and fire personnel from any injuries resulting from the River Road East Fire, the Flathead River from the Flathead Indian Reservation Boundary downstream to the confluence of the Clark Fork River is closed to all public occupation and recreation. For the same reasons, the Clark Fork River is closed to all public occupation and recreation from the Highway 135 Bridge at Ferry Landing downstream to the Clark Fork River Bridge in Plains, Montana.

(c) As this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rules. The emergency rules will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the partial closure will be posted at access points. The rules will be sent to interested parties and published as emergency rules in Issue No. 16 of the 2023 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 8, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. The emergency rules are effective August 21, 2023, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rules provides as follows:

NEW RULE I PARTIAL CLOSURE OF THE FLATHEAD RIVER (1) The Flathead River runs, in part, through Sanders County.

(2) The Flathead River is closed to all public occupation and recreation from the Flathead Indian Reservation Boundary downstream to the confluence of the Clark Fork River.

(3) This rule will expire as soon as the department determines the fire conditions improve and no longer present a risk to public health and safety. This will depend on weather conditions and the extent of the fire damage. Signs partially closing the Flathead River will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA

IMP: 2-4-303, 87-1-202, MCA

NEW RULE II PARTIAL CLOSURE OF THE CLARK FORK RIVER (1) The Clark Fork River runs, in part, through Sanders County.

(2) The Clark Fork River is closed to all public occupation and recreation from the Highway 135 Bridge at Ferry Landing downstream to the Clark Fork River Bridge in Plains, Montana.

(3) This rule will expire as soon as the department determines the fire conditions improve and no longer present a risk to public health and safety. This will depend on weather conditions and the extent of the fire damage. Signs partially closing the Clark Fork River will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA

IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rules is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail cbell@mt.gov. Any comments must be received no later than September 25, 2023.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the 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. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on August 21, 2023.

/s/ Dustin Temple

Dustin Temple

Director

Department of Fish, Wildlife and Parks

/s/ Kevin Rechhoff

Kevin Rechhoff

Rule Reviewer

Certified to the Secretary of State August 21, 2023.

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

In the matter of the adoption of an emergency rule closing the Kookoosint Fishing Access Site in Sanders County) NOTICE OF ADOPTION OF EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) The River Road East Fire continues to grow and is in close proximity to the Kookoosint Fishing Access Site (FAS), in Sanders County, Montana. On August 19, 2023, the department received a request from fire incident command to close the FAS as the River Road East Fire poses a threat to human life. Aerial fire operations are occurring over or near the FAS, and the fire is expected to continue to grow, presenting safety issues for fire personnel and the recreating public.

(b) In order to protect the public and fire personnel from any injuries resulting from the River Road East Fire, the Kookoosint FAS is closed to all uses, including recreational activities.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the partial closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 16 of the 2023 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 8, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. The emergency rule is effective August 21, 2023, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I CLOSURE OF THE KOOKOOSINT FISHING ACCESS SITE

(1) The Kookoosint Fishing Access Site is located in Sanders County.

(2) Due to the imminent risk to human health and safety posed by the River Road East Fire, the Kookoosint Fishing Access Site is closed to all public occupation and recreation.

(3) This rule will expire as soon as the department determines the fire conditions improve and no longer present a risk to public health and safety. This will depend on weather conditions and the extent of the fire damage. Signs closing the Kookoosint Fishing Access Site will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA

IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail cbell@mt.gov. Any comments must be received no later than September 25, 2023.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the 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. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on August 21, 2023.

/s/ Dustin Temple

Dustin Temple

Director

Department of Fish, Wildlife and Parks

/s/ Kevin Rechkoff

Kevin Rechkoff

Rule Reviewer

Certified to the Secretary of State August 21, 2023.

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

In the matter of the adoption of an) NOTICE OF ADOPTION OF
emergency rule closing the Paradise) EMERGENCY RULE
Crossing Fishing Access Site in)
Sanders County)

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) The River Road East Fire continues to grow and is in close proximity to the Paradise Crossing Fishing Access Site (FAS), in Sanders County, Montana. On August 19, 2023, the department received a request from fire incident command to close the FAS as the River Road East Fire poses a threat to human life. Aerial fire operations are occurring over or near the FAS, and the fire is expected to continue to grow, presenting safety issues for fire personnel and the recreating public.

(b) In order to protect the public and fire personnel from any injuries resulting from the River Road East Fire, the Paradise Crossing FAS is closed to all uses including recreational activities.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the partial closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 16 of the 2023 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 8, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. The emergency rule is effective August 21, 2023, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I CLOSURE OF THE PARADISE CROSSING FISHING ACCESS SITE (1) The Paradise Crossing Fishing Access Site is located in Sanders County.

(2) Due to the imminent risk to human health and safety posed by the River Road East Fire, the Paradise Crossing Fishing Access Site is closed to all public occupation and recreation.

(3) This rule will expire as soon as the department determines the fire conditions improve and no longer present a risk to public health and safety. This will depend on weather conditions and the extent of the fire damage. Signs closing the Paradise Crossing Fishing Access Site will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA

IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail cbell@mt.gov. Any comments must be received no later than September 25, 2023.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the 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. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on August 21, 2023.

/s/ Dustin Temple

Dustin Temple

Director

Department of Fish, Wildlife and Parks

/s/ Kevin Rechkoff

Kevin Rechkoff

Rule Reviewer

Certified to the Secretary of State August 21, 2023.

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

In the matter of the adoption of an) NOTICE OF ADOPTION OF
emergency rule closing the Full Curl) EMERGENCY RULE
Wildlife Management Area in Sanders)
County)

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) The River Road East Fire continues to grow and has almost reached the western edge of the Full Curl Wildlife Management Area (WMA), in Sanders County, Montana. On August 19, 2023, the department received a request from fire incident command to close the WMA as the River Road East Fire poses a threat to human life. Aerial fire operations are occurring over or near the WMA, and the fire is expected to continue to grow, presenting safety issues for fire personnel and the recreating public.

(b) In order to protect the public and fire personnel from any injuries resulting from the River Road East Fire, the Full Curl WMA is closed to all uses, including recreational activities.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the partial closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 16 of the 2023 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 8, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. The emergency rule is effective August 21, 2023, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I CLOSURE OF THE FULL CURL WILDLIFE MANAGEMENT AREA (1) The Full Curl Wildlife Management Area is located in Sanders County.

(2) Due to the imminent risk to human health and safety posed by the River Road East Fire, the Full Curl Wildlife Management Area is closed to all public occupation and recreation.

(3) This rule will expire as soon as the department determines the fire conditions improve and no longer present a risk to public health and safety. This will depend on weather conditions and the extent of the fire damage. Signs closing the Full Curl Wildlife Management Area will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA

IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail cbell@mt.gov. Any comments must be received no later than September 25, 2023.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the 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. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on August 21, 2023.

/s/ Dustin Temple

Dustin Temple

Director

Department of Fish, Wildlife and Parks

/s/ Kevin Rechkoff

Kevin Rechkoff

Rule Reviewer

Certified to the Secretary of State August 21, 2023.

BEFORE THE ALTERNATIVE HEALTH CARE BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION AND
RULES I through IV and the) AMENDMENT
amendment of ARM 24.111.502,)
24.111.503, 24.111.511, 24.111.610,)
24.111.611, and 24.111.2301)
pertaining to midwife prescribing)

TO: All Concerned Persons

1. On June 23, 2023, the Alternative Health Care Board (board) published MAR Notice No. 24-111-28 regarding the public hearing on the proposed changes to the above-stated rules, at page 542 of the 2023 Montana Administrative Register, Issue No. 12.

2. On July 14, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

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

COMMENT 1: One commenter suggested the board consider allowing direct-entry midwives to provide primary care to a woman whose pregnancy is considered high-risk simply due to the mother's age so long as the mother is otherwise in good health and/or if the care is approved by a physician.

RESPONSE 1: Age alone is not sufficient to make a pregnancy high risk, and this condition is already addressed in ARM 24.111.611(1)(a)(xxv).

COMMENT 2: One commenter noted that there appears to be an error on the dosage for lidocaine in NEW RULE III, which states that the maximum dosage should be 2% with a maximum dose of 50mL. The commenter notes that using this formula, 50cc of a 2% lidocaine solution is 1000mg, and the maximum lidocaine dosage is 300mL. The commenter requests the board change the dosage to either 10cc of 2% or 20cc of 1%.

RESPONSE 2: The board agrees and will adjust the dosage as suggested.

COMMENT 3: One commenter suggested the board consider requiring pharmacology continuing education (CE) for midwives as a yearly requirement.

RESPONSE 3: The board considered this suggestion during the drafting process and determined the formulary is static and not changing, is covered in standard

midwifery education, and in regular use. Mandating further education is not necessary at this time.

COMMENT 4: Several commenters stated the formulary committee had not met prior to the proposal being issued and suggested that was a violation of 37-26-201(8), MCA.

RESPONSE 4: The formulary committee met several times over the course of several years prior to the statutory change, based on ongoing expressed frustration between naturopathic physicians and pharmacists as to what prescribing was allowed. The formulary committee had extensive discussions regarding naturopathic education, training, and scopes of practice from neighboring states. In January of 2022, the formulary committee recommended amendments to the board that did not require a statute change, indicating the committee felt an exclusionary formulary was best, and would eliminate the confusion between naturopathic physicians and pharmacists on the ability of naturopaths to prescribe. The board took those recommendations, proposed and publicly noticed rules, and then after receiving and considering public comment, determined that a statute change was necessary to achieve the formulary committee's recommendations. Therefore, once the statute change had been accomplished, the board could proceed to institute the recommendations the committee had been recommending for several years.

In regards to the suggested statutory violation, the board notes that the formulary committee is required to create the formulary and meet annually to suggest changes, which are required to be reviewed by the board and published as administrative rules. The formulary committee did create the formulary in 1998 as part of MAR Notice No. 8-4-11, and met to suggest changes to the full board since that time.

The formulary committee met July 19, 2023, and submitted comment as part of this project that the proposed rule accurately reflected the work the committee had done and the recommendations the committee made to the board over the past several years.

COMMENT 5: One commenter objected to the lack of documentation of the formulary committee's work and proposed the board include results of conducted research as part of the rules notice.

RESPONSE 5: Formulary committee meetings were publicly noticed and included public discussion and input from anyone in attendance who wished to participate. Over the past several years, no public commenter has expressed concern about the committee's work. Committee discussions were recorded and remain available should anyone wish to listen to the meetings. The statute does not require a specific process for the committee to follow in evaluating curricula and CE. Therefore, committee members discussed their individual research, education, training, and CE opportunities on the record during the meetings and directed staff as a result of those discussions.

COMMENT 6: Several commenters noted that the formulary committee met during the comment period, suggested it was a rushed meeting, and suggested it could have provided greater insight into the concerns related to the formulary.

RESPONSE 6: The board publicly noticed the formulary committee meeting, in an abundance of caution relating to concerns expressed by the Economic Affairs Interim Committee, several days in advance of the committee meeting, and sent the notice to the board's interested parties list, as required by statute. Several members of the public attended, and only one offered public comment, which was in support of the board's proposal.

COMMENT 7: Multiple commenters believed the legislature intended to require all licensed naturopaths and applicants to take a competency exam in lieu of additional education.

RESPONSE 7: The legislature did not put any additional requirements into statute regarding existing licensees. The testing requirements for naturopathic doctors (ND) licensure in Montana have been in effect since the implementation of the license. Additionally, NDs have a CE requirement and have been prescribing safely since 1998. The existing competency exam is working well, along with the CE requirement.

COMMENT 8: Several commenters noted that the formulary committee had not reviewed curricula from naturopathic schools.

RESPONSE 8: Members of the formulary committee, who are graduates of naturopathic schools of medicine, indicated that their training included extensive pharmacology training and did not differentiate between natural and synthetic substances. The board also examined current curricula at accredited schools, determining that naturopathic physicians attend four years of rigorous education, with hundreds of hours of pharmacology education. Additionally, third-party accreditors regularly monitor naturopathic medical schools for compliance with standards. Further, the formulary committee considered neighboring states with similar education requirements for licensure, and their formularies in reaching its recommendations to the board.

COMMENT 9: Several commenters noted that this rulemaking seems rushed.

RESPONSE 9: The formulary committee has been working on this issue for years, including publicly noticed meetings where the public provided input and comments on the committee's work. Further, the legislature put an immediate effective date on Senate Bill (SB) 100, meaning that rulemaking had to be a priority for the board. The board further notes that at its publicly noticed May 2023 meeting, three members of the public attended. At its February 2023, publicly noticed meeting with discussion on SB 100, which had been introduced, four members of the public attended, and one made comment on SB 100. The board has had adequate opportunity for public comments during the legislative and rule drafting process, in

addition to the extensive stakeholder input the department undertook before the board considered rule drafts.

COMMENT 10: Several commenters supported the formulary rule as proposed, stating the proposal is consistent with the work of the formulary committee over the previous three years, including discussions about education received in naturopathic medical school, pharmacological examination requirements, and CE opportunities.

RESPONSE 10: The board appreciates all comments received during the rulemaking process.

COMMENT 11: Several commenters stated they had received comprehensive pharmacology education as part of their naturopathic training.

RESPONSE 11: The board agrees with the commenters. See RESPONSES 8, 9, and 10.

COMMENT 12: Multiple commenters believed that the rule changes will bring Montana into line with what naturopathic physicians are allowed to prescribe in neighboring states.

RESPONSE 12: The board agrees that NDs in the region have similar education requirements and similar prescribing rights and have been doing so safely, thus filling a need in primary health care.

COMMENT 13: Several commenters stated that the restriction on prescribing drugs of a natural origin was 30 years old, and was meaningless, confusing, and arbitrary in the actual practice.

RESPONSE 13: The board notes that NDs have been legally authorized to prescribe medications for 30 years including legend drugs with specific limitations. The prescribing of legend drugs is not new for NDs.

COMMENT 14: One commenter noted this rules proposal was the result of multiple years of intense research, deliberations, and formulary committee work.

RESPONSE 14: The board agrees with the commenter. See RESPONSES 4, 5, 6, 7, 8, 9, and 10.

COMMENT 15: Multiple commenters opposed the proposal, stating that all providers need to demonstrate competency for prescribing medications, not just new applicants.

RESPONSE 15: The legislature did not put any additional requirements into statute regarding existing licensees. Further, all licensees have a professional obligation as part of their licensure to practice within the scope of their own education, training, and experience, and to meet the minimum levels of competency set by the

legislature. The board expects licensees will seek out the training and education necessary to maintain competency in their practices.

As stated in 37-26-102(1), MCA, "The legislature finds that a significant number of Montanans choose naturopathic medicine for their health care needs and declares that naturopathic medicine is a distinct health care profession that affects the public health, safety, and welfare and contributes to public freedom of choice in health care." Montana-licensed naturopathic doctors (NDs) are primary health care providers who diagnose and treat human health conditions, injuries, and diseases. See 37-26-103(7), MCA.

Montana-licensed NDs must complete a comprehensive course of study at an approved four-year, accredited, graduate-level naturopathic medical school and pass a rigorous professional examination. See 37-26-402, MCA. Approved naturopathic medical colleges are graduate schools that are accredited by the Council on Naturopathic Medical Education (CNME) which is recognized by the U.S. Department of Education.

NDs are educated in the same biomedical sciences as are MDs, and in addition, study clinical nutrition, physical medicine, pharmacology, botanical medicine, psychology, and counseling. This study includes over 4100 hours of total instruction with 1200 hours of hands-on clinical training and 100 hours of pharmacology. All ND students are training to become primary care physicians. ND students learn to recognize the symptoms of diseases that fall outside of their scope of practice and refer patients to specialists as appropriate. While some practicing NDs do expand their education and develop specialty areas, the focus of naturopathic medical school is identifying and treating diseases that fall within the realm of general practice. Pharmacology education is required for all ND students. Accredited naturopathic medical schools provide instruction on basic principles of pharmacology including clinical indications, pharmacokinetics (to include absorption, distribution, metabolism, and excretion of drugs), pharmacodynamics (including dose-receptor interactions and dose response relationships), mechanisms of action, and the chief side effects and toxicity of prototypical drugs of each of the major contemporary drug classes. Students are expected to be able to predict the chief therapeutic effects and chief side effects. In specialty courses such as cardiology, gastroenterology, gynecology, and endocrinology, students are taught the therapeutic options for specific conditions and trained in the broadest national scope of practice for an ND which includes both naturopathic and allopathic care including surgical and pharmacological options. Practicing NDs see many patients daily who have pharmaceutical medications already in place, and they must interface with the clinical implications, indications, contraindications, side effects, and potential toxicity of the medications that cover all realms of practiced medicine and specialty areas.

The Naturopathic Physicians Licensing Exam (NPLEX), required for licensure, tests applicants' knowledge of pharmacology. Specifically, Part II of the NPLEX, the Core Clinical Science Examination, is a case-based, integrated test of clinical competency and is designed to measure a graduate's readiness to practice naturopathic medicine, assessing mastery of the competencies derived from a job analysis of practicing naturopathic physicians and specifically requires knowledge of medical conditions and diagnosis, lab tests and diagnostic imaging, botanical medicines, and pharmacology of all major classes of commonly prescribed drugs

including; primary actions, adverse effects, indications, contraindications, and potential interactions with botanical medicines, nutritional supplements, and other pharmaceuticals; natural therapeutic interventions having effects similar to commonly prescribed pharmaceuticals; and to monitor therapeutic drug levels and assess for toxicity.

NDs are licensed in 23 states and three U.S. territories and have prescribing rights in 15 states. The Drug Enforcement Administration (DEA) grants DEA numbers to licensed NDs with prescribing authority. Neighboring states where NDs are licensed, including Idaho, Washington, and Oregon, recognize the education and training of NDs, do not restrict the prescribing authority of licensed NDs, and in the state of Oregon have done this safely for over 20 years.

In addition, Montana-licensed NDs are required to complete at least five hours of CE in pharmacology annually, which is a third of the required CE for license renewal. See ARM 24.111.2102. Montana-licensed NDs are well educated in pharmacology.

COMMENT 16: Multiple commenters referenced an agreement reached during the legislative session to require all licensees to pass a competency examination, drawing attention to the board's stated reason of "the Legislature requested the board consider requiring specific pharmacology education of licensees new to practicing in Montana" and requests the board honor an agreement made to require passage of a test.

RESPONSE 16: SB 100 does not reference a competency exam for existing licensees, nor did the bill sponsor insert one. Licensees are expected to maintain competency in their practice, and not every licensee will choose to prescribe the drugs allowed by the formulary. The bill sponsor was provided with the rule proposal notice and responded that it "looks good." The board is unaware of and was not party to any agreements reached during the session and notes that those agreements are not in the bill as passed. See also RESPONSE 15.

COMMENT 17: Multiple commenters believed the board is not protecting patients by not requiring a competency examination of all licensees.

RESPONSE 17: All Montana-licensed NDs are highly trained and are required to take a rigorous exam, the NPLEX II. Please refer to RESPONSE 15 for further detail about the required education and training for all Montana licensed NDs. Further, the training NDs receive has carried the ability to prescribe more medications than what has been allowed in Montana law for the last 30 years. See also RESPONSES 15, 16, and 17.

COMMENT 18: One commenter suggested the board require educational programs that cover the drugs on the formulary list.

RESPONSE 18: The board notes that formal educational programs required for licensure do address pharmacology, and that each naturopathic physician is

required to complete pharmacology as part of the yearly CE process. Please see RESPONSES 15 and 17.

COMMENT 19: One commenter expressed concern about the breadth of training and understanding specific to antineoplastic medications and suggested the board consider requiring more training before allowing NDs to prescribe.

RESPONSE 19: NDs are trained as primary care providers. Training includes knowing when to refer out, including to specialists, just like any other primary care provider. NDs are limited to topical or oral prescriptions only, and the medications referenced by the commenter have been on the formulary list for years.

COMMENT 20: One commenter requested the board consider requiring training on synthetic opioid prescribing as well.

RESPONSE 20: Naturopathic physicians have been able to prescribe opioids since 1998, when the first formulary was created. Many NDs choose to carry a DEA license, which requires additional oversight. The DEA is now requiring opioid specific training for every licensee. NDs can prescribe Schedules II-V and have for years without issue. NDs are required to use the MPDR as part of their practice.

In addition, as of June 2023, the DEA requires all new and renewal applicants for a DEA license to take eight credit hours of training regarding the treatment and management of patients with opioid or other substance use disorders. All NDs who carry or apply for a DEA license will fall under this requirement.

COMMENT 21: Multiple commenters objected to naturopaths being allowed to prescribe opioids.

RESPONSE 21: Naturopathic physicians were able to prescribe opioids prior to this rulemaking process. See RESPONSE 20.

COMMENT 22: Several commenters suggested the board insert a CE requirement for naturopathic physicians to complete education in pharmacotherapeutics.

RESPONSE 22: The board has an existing requirement that all licensed NDs complete five hours of CE in pharmacology for every renewal cycle. The board does not see the need to insert additional requirements, expecting that licensees will choose CE relevant to individual practices and necessary for the competent practice of each licensee.

COMMENT 23: Several commenters suggested the board consider a tiered approach to allowing naturopathic physicians to prescribe synthetic drugs once the naturopathic physicians have demonstrated competency.

RESPONSE 23: The board determined the tiered approach is unnecessary, and that naturopathic licensees will continue to provide care that is within the scope of

their education, training, and experience. Naturopathic licensees have been prescribing complex medications for years with few issues. See RESPONSE 15.

COMMENT 24: One commenter asked the board to consider a waiver of competency testing in addition to competency testing requirements.

RESPONSE 24: The board concludes that a waiver is unnecessary, as there is no requirement for competency testing. See RESPONSES 15, 17, and 18.

COMMENT 25: Several commenters asserted that the proposed Clinical Elective Pharmacology Examination in ARM 24.111.502 is not sufficient to establish competency, as it was first introduced in August of 2017.

RESPONSE 25: The board is comfortable that the exam is sufficient to establish competency. The test is a psychometrically developed and recognized exam in the practice of naturopathic medicine that covers, as the commenters noted, both legend and natural medications. Further, the board noted, states with similar laws governing the practice of naturopathic medicine utilize this test. The NPLEX II core clinical exam has always contained and tested core clinical pharmacology in all major pharmacology classes and maintains doing so. The new elective exam does not minimize in any way the standard core clinical exam as it sufficiently covers all minimum competency requirements for each Montana-licensed ND to prescribe safely. In addition, every ND is required to maintain ongoing pharmacology CE yearly. See RESPONSES 15 and 17.

COMMENT 26: One commenter believed that naturopaths do not receive the education to prescribe medication or anything beyond suggest supplements labeled by the FDA as food supplements.

RESPONSE 26: The board strongly disagrees and notes naturopathic physicians have been practicing in Montana for 30 years with relatively few practice complaints.

COMMENT 27: Several commenters stated that naturopaths lack the education necessary to prescribe medications safely and effectively.

RESPONSE 27: See RESPONSES 15, 17, 18, and 25.

COMMENT 28: One commenter noted that the public may be led to believe that naturopaths have training equivalent to medical doctors and may result in delayed or inappropriate care.

RESPONSE 28: As a distinct health care profession in Montana, per 37-26-102(1), MCA, Montana-licensed NDs have excellent training, offer excellent medical care, and make referrals to specialists when needed. They take these responsibilities seriously and have an excellent safety record in health care. In addition, see RESPONSES 15, 17, and 18.

COMMENT 29: One commenter has seen many patients in clinical trainings who are being treated by naturopaths for thyroid issues and opined that NDs do not understand the pathophysiology or proper treatment for a disease process.

RESPONSE 29: NDs have pathophysiology training and specific training in thyroid. This comment is not limited to NDs, but rather any prescriber may have an issue prescribing for thyroid. There are substandard providers in every profession, and this comment is unfairly targeted at NDs. See RESPONSES 15 and 17 for ND training and education requirements.

RESPONSE 30: One commenter stated that it is not uncommon for a primary care physician or cardiologist to manage complications of hypothyroidism while the naturopathic physician continues to prescribe the offending agent.

RESPONSE 30: The board notes that any specific allegations the commenter may have should be addressed through the disciplinary process. See RESPONSE 29.

COMMENT 31: Multiple commenters opposed the proposal, stating that if naturopathic physicians want to prescribe in the same way as allopathic or osteopathic physicians, they should have to undergo similar training.

RESPONSE 31: Naturopathic physicians undergo pharmacological training, and naturopathic physicians are required to complete CE, specifically in pharmacology, over the course of their career. Allopathic and osteopathic physicians licensed by Montana have no CE requirements for renewal. Please see RESPONSES 15, 17, and 18.

COMMENT 32: One commenter noted that this rule change would allow patients better, more comprehensive care in a timely fashion.

RESPONSE 32: The board appreciates all comments made during the rulemaking process.

COMMENT 33: Multiple commenters noted that this rule change would have no effect on the way they practice.

RESPONSE 33: The board appreciates all comments made during the rulemaking process.

COMMENT 34: One commenter noted that this rule change will result in clarity, which translates into better patient care.

RESPONSE 34: The board agrees and notes that the formulary committee's intent was to increase clarity for prescribers and pharmacists.

COMMENT 35: One commenter noted that naturopathic pharmacology education did not characterize drugs as "natural" or "synthetic."

RESPONSE 35: The board agrees with the commenter. In addition, all pharmacology training for NDs includes the following: Pharmacology education is required for all ND students. Accredited naturopathic medical schools provide instruction on basic principles of pharmacology including clinical indications, pharmacokinetics (to include absorption, distribution, metabolism, and excretion of drugs), pharmacodynamics (including dose-receptor interactions and dose response relationships), mechanisms of action, and the chief side effects and toxicity of prototypical drugs of each of the major contemporary drug classes. Students and doctors are expected to be able to predict the chief therapeutic effects and chief side effects. See RESPONSES 15 and 17. Oregon and Washington removed those requirements in 2005 and 2009, respectively.

COMMENT 36: Several commenters noted these rule changes will clarify and eliminate inefficiencies in Montana's health care system.

RESPONSE 36: The board agrees and notes these rules are part of the formulary committee's work of the past two and a half years and one of its stated goals for NDs, pharmacists, and patients.

COMMENT 37: One commenter opined the board was veering into advocating for the naturopathic profession, rather than protecting patient safety.

RESPONSE 37: The board notes it is conducting this rulemaking to implement a legislative directive in SB 100. The legislature passed the bill by a wide margin, and the board is trusted to draft rules that protect public safety. The Montana people have requested this change. The board members take their duties very seriously and believe this comment is out of line.

COMMENT 38: One commenter suggested the board extend the comment period to allow the Board of Medical Examiners to comment on the package.

RESPONSE 38: The board notes that if any other boards wanted to comment, they could have convened a meeting to discuss the proposal. Individual board members were also free to comment. Further, a medical doctor licensed by the Board of Medical Examiners serves on both the formulary committee and the board and provided input into these rules. The board is not extending the comment period.

COMMENT 39: One commenter requested a joint board meeting between the Board of Medical Examiners and this board to work through the rule changes.

RESPONSE 39: The board notes, as of October 1, 2023, there are four licensing boards with prescriptive authority and does not believe a joint meeting is necessary to work through these proposed rules.

The board received input from the formulary committee, which contains both a pharmacist and a medical doctor, in determining to propose these rules. Other

licensing boards and licensees were free to submit comments if desired. See RESPONSE 38.

COMMENT 40: One commenter notes that the Board of Pharmacy was consulted as a stakeholder, but that the Board of Medical Examiners was not.

RESPONSE 40: The board consulted with the Board of Pharmacy specifically to address comments both boards received as to confusion over the formulary and specific issues that ND patients were having in getting prescriptions filled. See RESPONSE 38.

COMMENT 41: One commenter believed that these changes are a large expansion of scope, going from the list of medications on the formulary to more than 20,000 FDA-approved prescription drugs.

RESPONSE 41: Drugs are grouped into types, which is covered within the training of naturopathic physicians. Every licensee has an obligation to meet minimum education requirements to practice. The board thinks the number of approved drugs seems inflammatory. Since the previous exemplary formulary was not exhaustive, there was never a measurement of the medications an ND could prescribe.

As noted in the RESPONSE 15, all licensees have a professional obligation to practice within the scope of their own education, training, and experience, and meet the minimum levels of competency set by the legislature. The board expects licensees to seek out the training and education necessary to maintain competency.

COMMENT 42: One commenter requested the board investigate the magnitude of expansion and provide an assessment of the risks without requiring an exam.

RESPONSE 42: Please see RESPONSES 15, 17, and 41.

COMMENT 43: One commenter noted that Oregon has a similar scope of practice for naturopaths and indicates the commenter has firsthand experience with unsafe prescriptions for lithium and opioids.

RESPONSE 43: The board notes there have been disciplinary actions for Montana doctors based on prescribing practices for lithium and opioids, which NDs have been able to prescribe for years.

COMMENT 44: One commenter opined that the decline of health care and rising health care costs in the United States began when non-physician groups began to be able to provide health care.

RESPONSE 44: This comment is beyond the scope of the proposed rulemaking.

COMMENT 45: One commenter believed health care costs will continue to rise based on scam treatments that do not work.

RESPONSE 45: This comment is beyond the scope of the proposed rulemaking, and the board strongly objects to the characterization of a licensed profession as a "scam."

COMMENT 46: Several commenters suggested adding an unprofessional conduct rule indicating it is unprofessional conduct for a naturopathic physician to prescribe or dispense outside the scope of practice.

RESPONSE 46: The board notes that 37-1-316, MCA, provides that licensees can be disciplined for conduct not meeting generally accepted standards of practice. No other prescribing professions have this standard, and the board does not see the need to add it at this time.

COMMENT 47: One commenter requested that if the rules proceed, the board may subject itself to lawsuits by having inadequate public protection safeguards.

RESPONSE 47: The board is implementing these rules in response to enacted legislation. The legislature is constitutionally charged with enacting laws, including setting minimum qualifications necessary to obtain a license and engage in practice. The legislature also determines what safeguards are necessary to protect the public.

4. The agency has adopted New Rule I (24.111.614), New Rule II (24.111.615), and New Rule IV (24.111.617) as proposed.

5. The agency has amended ARM 24.111.502, 24.111.503, 24.111.511, 24.111.610, 24.111.611, and 24.111.2301 as proposed.

6. The agency has adopted New Rule III with the following changes, stricken matter interlined, new matter underlined:

NEW RULE III (24.111.616) USE OF FORMULARY DRUGS (1) Endorsed midwives may use the drugs in 37-27-302(2), MCA, according to the following protocol describing the indication for use, dosage, route of administration, and duration of treatment:

Drug	Indication	Dose- in conformance ACOG guidelines	Route of Administration	Duration of Treatment
Oxygen	Maternal/Fetal Distress	10-12 L/min. 10 L/min.	Bag and mask Mask	Until maternal/fetal stabilization is achieved or transfer to

	Neonatal Resuscitation	10-12 L/min. 10 L/min.	Bag and mask Mask	hospital is complete Until stabilization is achieved or transfer to a hospital is complete
Oxytocin (Pitocin)	Postpartum hemorrhage only	10 Units/ml	Intramuscularly only	1-2 doses Transport to hospital required if more than two doses are administered
Lidocaine HCl 1% 2%	Local anesthetic for use during postpartum repair of lacerations or episiotomy	Maximum 50 ml <u>20 cc</u> <u>10 cc</u>	Percutaneous infiltration only	Completion of repair
Penicillin G (Recommended)	Group B Strep Prophylaxis	5 million units initial dose, then 2.5 million units every 4 hours until birth	IV in ≥ 100 ml LR, NS or D ₅ LR	Birth of baby
Methergine (Methylergonovine)	Postpartum hemorrhage only	0.2mg/ml	Intramuscularly only 1 dose	Transport to hospital required if single dose does not stop hemorrhage
Ampicillin Sodium (Alternative)	Group B Strep Prophylaxis	2 grams initial dose, then 1 gram every 4 hours until birth	IV in ≥100 ml NS or LR	Birth of baby

Cefazolin Sodium (drug of choice for penicillin allergy with low risk for anaphylaxis)	Group B Strep Prophylaxis	2 grams initial dose, then 1 gram every 8 hours	IV in ≥ 100 ml LR, NS or D ₅ LR	Birth of Baby
Clindamycin Phosphate (drug of choice for penicillin allergy with high risk for anaphylaxis)	Group B Strep Prophylaxis	900 mg every 8 hours	IV in ≥100 ml NS (not LR)	Birth of Baby
Epinephrine HCl 1:1000	Treatment or post-exposure prevention of severe allergic reactions	0.3 ml	Subcutaneously or intramuscularly	Every 20 minutes or until emergency medical services arrive Administer first dose then immediately request emergency services
Lactated Ringer's (LR) 5% Dextrose in Lactated Ringer's solution (D₅LR) 0.9% Sodium Chloride (NS) Sterile Water	To achieve maternal stabilization Reconstitution of antibiotic powder	1 - 2 liter bags First liter run in at a wide-open rate, the second liter titrated to client's condition As directed	Intravenously As directed	Until maternal stabilization is achieved or transfer to a hospital is complete Birth of Baby
Cytotec (Misoprostol)	Postpartum hemorrhage only	Up to 800 mcg	Rectally is the preferred method Orally is allowed	1-2 doses Transport to hospital required if

				more than one dose is administered
Rho(d) Immune Globulin	Prevention of Rho (d) sensitization in Rho (d) negative women	300 mcg	Intramuscularly	<p>Single dose at any gestation for Rho (d) negative, antibody negative women within 72 hours of spontaneous bleeding or abdominal trauma.</p> <p>Single dose at 26-28 weeks gestation for Rho (d) negative, antibody negative women</p> <p>Single dose for Rho (d) negative, antibody negative women within 72 hours of delivery of Rho (d) positive infant, or infant with unknown blood type</p>
Phytonadione	Prophylaxis for Vitamin K Deficiency Bleeding			1 dose

0.5% Erythromycin Ophthalmic Ointment	Prophylaxis of Neonatal Ophthalmia	1 cm ribbon in each eye	Topical	1 dose
Tranexamic acid	Postpartum Hemorrhage	1000 mg over 10 minutes given within 3 hours of birth	Intravenous	Initiate transfer after administering first dose. If bleeding continues after 30 minutes or stops and restarts within 24 hours after the first dose, a second dose of 1000mg may be given.
Terbutaline	Stop or prevent premature labor	As per direct order of a licensed physician	As per direct order of a licensed physician	As per direct order of a licensed physician

AUTH: 37-1-131, 37-27-302, MCA
 IMP: 37-1-131, 37-27-302, MCA

ALTERNATIVE HEALTH CARE BOARD
 ALISUN BONVILLE, ND, CHAIR

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

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

Certified to the Secretary of State August 15, 2023.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.34.1902 pertaining to)
Applied Behavior Analysis Services)

TO: All Concerned Persons

1. On May 26, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1028 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 468 of the 2023 Montana Administrative Register, Issue Number 10.

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

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

COMMENT #1: Several commenters voiced support for this proposed rule change.

RESPONSE #1: The department appreciates the commenters' feedback and support.

COMMENT #2: One commenter requested that these changes be adopted retroactively to September 24, 2022.

RESPONSE #2: The department agrees that a retroactive date would be beneficial to persons who received a diagnosis completed by one of the listed qualified healthcare providers prior to the rule's adoption to improve access to medically necessary ABA services. However, since September 24 is toward the end of the month, the department will adopt these changes retroactively to September 1, 2022. Any diagnosis completed by a qualified healthcare professional on or after September 1, 2022, may be accepted as a qualifying diagnosis.

COMMENT #3: One commenter requested that the department explore revising the definitions for the Behavior Intervention Assessment (BIA), the treatment plan, and the Functional Behavior Assessment (FBA) to better reflect the process of ABA service provision and best practices.

RESPONSE #3: The department thanks the commenter for this feedback and will take it under advisement and consideration for future programmatic or rulemaking changes.

COMMENT #4: One commenter requested that the department add clarification on the process for initiating services and requesting additional units of service in the manual.

RESPONSE #4: The department has provided trainings on the initiation and continuation of services, which can be accessed at <https://medicaidprovider.mt.gov/76> under the ABA Trainings tab.

4. These rule amendments are retroactively effective September 1, 2022.

/s/ Rachel Raymond
Rachel Raymond
Rule Reviewer

/s/ David Gerard
David Gerard, Deputy Director
Department of Public Health and Human
Services

Certified to the Secretary of State August 15, 2023.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

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

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

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

Transportation Interim Committee

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

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|---------------|--|
| Known Subject | 1. Consult ARM Topical Index.
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2023. This table includes notices in which those rules adopted during the period March 10, 2023, through August 5, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2023, this table, and the table of contents of this issue of the Register.

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

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

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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 July 2023 appear. Potential vacancies from September 1, 2023 through September 30, 2023, are also listed.

IMPORTANT

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

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

EXECUTIVE BRANCH APPOINTEES FOR JULY 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Funeral Service			
Mr. Rick Walter Great Falls Qualifications (if required): Licensed Mortician	Governor	Steve Schnider	7/1/2023 7/1/2028
Board of Investments			
Mr. Dwaine Iverson Shelby Qualifications (if required): Financial Community Representative	Governor	New	7/20/2023 1/1/2026
Governor's Advisory Council on Aging			
Ms. Rebecca Bird Livingston Qualifications (if required): Public Member	Governor	Ryan Clark	7/24/2023 7/1/2023
Ms. Gayle Carlson Missoula Qualifications (if required): Public Member	Governor	Reappointed	7/24/2023 7/1/2026
Ms. Audrey Finlayson Great Falls Qualifications (if required): Public Member	Governor	Curly (Jim) Burns	7/24/2023 7/1/2026

EXECUTIVE BRANCH APPOINTEES FOR JULY 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Advisory Council on Aging Cont.			
Ms. Mary Grossman Black Eagle Qualifications (if required): Public Member	Governor	Wally Melcher	7/24/2023 7/1/2026
Mr. Bob Meyers Great Falls Qualifications (if required): Public Member	Governor	Reappointed	7/24/2023 7/1/2026
Ms. Peggy Tombre Bozeman Qualifications (if required): Public Member	Governor	Reappointed	7/24/2023 7/1/2026
Montana Electrical Board			
Lynn St. Thomas Bozeman Qualifications (if required): Licensed Electrician	Governor	John Gordon	7/1/2023 6/30/2027

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2023 THROUGH SEPTEMBER 30, 2023

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
9-1-1 Advisory Council		
Ms. Lisa Kelly, Kalispell Qualifications (if required): Representative of Montana telecommunications providers	Governor	9/1/2023
Commissioner Gary A. Macdonald, Wolf Point Qualifications (if required): Representative of the Montana Association of Counties	Governor	9/1/2023
Col. Tom Butler, Helena Qualifications (if required): Representative of the Department of Justice	Governor	9/1/2023
Dr. Michael L. Doto, Butte Qualifications (if required): Montana State Firefighters Association	Governor	9/1/2023
Mr. Geoffrey A. Feiss, Helena Qualifications (if required): Representative of Montana Telecommunications providers	Governor	9/1/2023
Mr. Burke Honzel, Fort Harrison Qualifications (if required): Representative of the Department of Military Affairs	Governor	9/1/2023
Mr. Quinn Ness, Helena Qualifications (if required): Department of Administration Director or Designee	Governor	9/1/2023
Mr. Curtis Eugene Stinson, Helena Qualifications (if required): Montana Association of Chiefs of Police	Governor	9/1/2023
Mr. Gary Evans, Great Falls Qualifications (if required): Representative of Montana Telecommunications providers	Governor	9/1/2023

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2023 THROUGH SEPTEMBER 30, 2023

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
9-1-1 Advisory Council Cont. Chief Doug Colombik, Miles City Qualifications (if required): Montana Association of Chiefs of Police	Governor	9/3/2023
ABLE (Achieving a Better Life Experience) Program Oversight Committee Mr. Mitchell Bohn, Billings Qualifications (if required): Member of the general public who has a disability	Governor	9/1/2023
Alternative Health Care Board Dr. Alisun Bonville, Bozeman Qualifications (if required): Naturopath	Governor	9/1/2023
Dr. Sandra Shepherd, Missoula Qualifications (if required): Montana physician	Governor	9/1/2023
Board of Medical Examiners Dr. James N. Burkholder, Helena Qualifications (if required): Doctor of Medicine (MD)	Governor	9/1/2023
Dr. Ashleigh Marie Magill, Whitefish Qualifications (if required): Doctor of Medicine (MD)	Governor	9/1/2023
Mr. Douglas Keith Womack, Missoula Qualifications (if required): Licensed Acupuncturist	Governor	9/1/2023

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2023 THROUGH SEPTEMBER 30, 2023

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Psychologists Dr. Sara Boilen, Whitefish Qualifications (if required): Licensed psychologist in private practice	Governor	9/1/2023
Building Codes Council Mr. Stephen L'Heureux, Great Falls Qualifications (if required): Practicing and licensed architect in Montana	Governor	9/30/2023
Mr. Matthew Lemert, Bozeman Qualifications (if required): Licensed plumber selected by the Board of Plumbers	Governor	9/30/2023
Mr. Joshua K. Wallery, Helena Qualifications (if required): Representative of the manufactured housing industry	Governor	9/30/2023
Ms. Karen Courtney, Laurel Qualifications (if required): County, city, or town building inspector	Governor	9/30/2023
Mr. Kris Rivers, Billings Qualifications (if required): Licensed electrician selected by the Electrical Board	Governor	9/30/2023
Mr. Calvin Frank, Buffalo Qualifications (if required): Practicing professional engineer	Governor	9/30/2023
Mr. Joel Hecker, Billings Qualifications (if required): Elevator mechanic	Governor	9/30/2023

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2023 THROUGH SEPTEMBER 30, 2023

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Eastern Elder Justice Council		
Ms. Margaret Gallagher, Billings Qualifications (if required): Experience in law	Governor	9/30/2023
Mr. Chris McConnell, Helena Qualifications (if required): Department of Justice Representative	Governor	9/30/2023
Ms. Amy Schuett, Billings Qualifications (if required): Experience in health care and senior services	Governor	9/30/2023
Ms. Heather Handran, Glendive Qualifications (if required): Experience in senior advocacy	Governor	9/30/2023
Mr. Mike Guy, Billings Qualifications (if required): Experience in law enforcement	Governor	9/30/2023
Ms. Jodi Berry, Sidney Qualifications (if required): Experience in senior advocacy	Governor	9/30/2023
Mr. Brett Lapham, Billings Qualifications (if required): Experience in tax and finance	Governor	9/30/2023
Historical Records Advisory Board		
Ms. Anita Scheetz, Poplar Qualifications (if required): Research Institution Rep	Governor	9/30/2023

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2023 THROUGH SEPTEMBER 30, 2023

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Historical Records Advisory Board Cont. Ms. Anne L. Foster, Gardiner Qualifications (if required): Public Archivist	Governor	9/30/2023
Ms. Aubrey Japp, Butte Qualifications (if required): Public Archivist	Governor	9/30/2023
Ms. Eileen A. Wright, Billings Qualifications (if required): Research Institution	Governor	9/30/2023
Ms. Megan Sanford, Great Falls Qualifications (if required): Private Archivist	Governor	9/30/2023
Ms. Rachel Phillips, Bozeman Qualifications (if required): Private Archivist	Governor	9/30/2023
Mr. Rich Aarstad, Helena Qualifications (if required): State Archivist	Governor	9/30/2023
South Central Elder Justice Council Ms. Brenna Collins-Anderson, Butte Qualifications (if required): Health care and Social Work Experience	Governor	9/30/2023
Ms. Patricia Jirsa, Helena Qualifications (if required): Tax and Finance Experience	Governor	9/30/2023

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2023 THROUGH SEPTEMBER 30, 2023

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
South Central Elder Justice Council Cont.		
Mr. Michael Hagenlock, Belgrade Qualifications (if required): Social Work and Addiction Counseling Experience	Governor	9/30/2023
Ms. Maureen Exley, Bozeman Qualifications (if required): Law Experience	Governor	9/30/2023
Ms. LaDawn Whiteside, Helena Qualifications (if required): Health care and Adult Services Experience	Governor	9/30/2023
Ms. Nancy Andersen, Helena Qualifications (if required): Fraud, Finance, Community Outreach Experience	Governor	9/30/2023
Mr. Richard Heitstuman, Helena Qualifications (if required): Senior Advocacy Experience	Governor	9/30/2023
Upper Clark Fork Basin Remediation and Restoration Advisory Council		
Mr. Elton Ringsak, Butte Qualifications (if required): Citizen voting member-Silver Bow Co.	Governor	9/1/2023
Mr. Steve Hill, Anaconda Qualifications (if required): Citizen voting member-Deer Lodge Co.	Governor	9/1/2023

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2023 THROUGH SEPTEMBER 30, 2023

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Upper Clark Fork Basin Remediation and Restoration Advisory Council Cont.		
Ms. Maggie Schmidt, Deer Lodge Qualifications (if required): Citizen voting member-Powell Co.	Governor	9/1/2023
Ms. Kristine Beal, Missoula Qualifications (if required): Citizen voting member-Missoula Co.	Governor	9/1/2023
Billie Kulaski, Philipsburg Qualifications (if required): Citizen voting member-Granite Co.	Governor	9/1/2023
Mr. Bryon Nelson, Deer Lodge Qualifications (if required): Citizen voting member-Powell Co.	Governor	9/1/2023
Ms. Margery Christiansen, Fairmont Qualifications (if required): Citizen voting member-Deer Lodge Co.	Governor	9/1/2023
Mr. Mike Paffhausen, Butte Qualifications (if required): Citizen voting member-Silver Bow Co.	Governor	9/1/2023
Mr. Matt Dorrington, Helena Qualifications (if required): DEQ Director Designee	Governor	9/1/2023
Ms. Anna Pakenham Stevenson, Helena Qualifications (if required): DNRC Director designee	Governor	9/1/2023

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2023 THROUGH SEPTEMBER 30, 2023

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Upper Clark Fork Basin Remediation and Restoration Advisory Council Cont.		
Mr. Bill Schenk, Helena Qualifications (if required): FWP Director designee	Governor	9/1/2023
Western Elder Justice Council		
Ms. Janice Hinze, Missoula Qualifications (if required): Experience in senior advocacy	Governor	9/30/2023
Ms. Naomi Leisz, Trout Creek Qualifications (if required): Experience in Law	Governor	9/30/2023
Mel Teinsvold, Victor Qualifications (if required): Experience in finance	Governor	9/30/2023
Ms. Kirsten Madsen, Helena Qualifications (if required): CSI Office Representative	Governor	9/30/2023
Ms. Kristin Anderson, Missoula Qualifications (if required): Experience in healthcare	Governor	9/30/2023

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